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SAN FRANCISCO AND THE HETCH HETCHY RESERVOIR

HEARING

HELD BEFORE THE

COMMITTEE ON THE PUBLIC LANDS

OF THE

HOUSE OF REPRESENTATIVES

DECEMBER 16, 1908

ON

H. J. RES. 184

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JOINT RESOLUTION To allow the city and county of San Francisco to exchange land in the Yosemite National Park and adjacent national forest for portions of the Hetch Hetchy and Lake Eleanor Reservoir sites in said Yosemite National Park for the purposes of a municipal water supply.

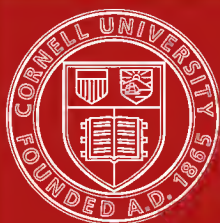
Whereas under authority of the act of February fifteenth, nineteen hundred and one (volume thirty-one, Statutes at Large, page seven hundred and ninety), the Secretary of the Interior has granted to the city and county of San Francisco a permit for what are known as the Lake Eleanor and Hetch Hetchy Reservoir sites in the Yosemite National Park for the purpose of a municipal water supply; and Whereas by its duly authorized representatives said city and county has agreed to enter into a stipulation protecting the public interest in the use and enjoyment of the Yosemite National Park as far as the rights of said city and county under said permit are concerned, especially stipulating that all land the title to which is held by said city and county within said park shall be open to the free use and enjoyment of the public at all times under rules and regulations of the Secretary of the Interior; and

Whereas said city and county has secured options upon various tracts of land within said park and the adjacent national forest, much of which land is especially valuable to the public for use in camping, but is now private land inaccessible to the public except under permission of the owners thereof; and

Whereas said city and county is desirous of purchasing the land upon which it holds options and exchanging it with the United States for the portions of the Hetch Hetchy and Lake Eleanor Reservoir sites which will be flooded by its reservoirs: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That upon the full relinquishment to the United States by the city and county of San Francisco of a title free from all liens or incumbrances of any nature whatsoever to any tract or tracts of land within the Yosemite National Park or that part of the national forests adjacent thereto which was eliminated from said park by the act of February seventh, nineteen hundred and five (volume thirty-three, Statutes at Large, page seven hundred and twenty), the Secretary of the Interior is hereby empowered and directed to issue patent to said city and county of San Francisco for all or such part of the land in said reservoir sites selected by said city and county as may be approximately equal, by reference to the smallest legal subdivisions, to the land relinquished: *Provided,* That until reservoirs are actually established in said reservoir sites any land patented hereunder to said city and county shall continue subject to the free use and enjoyment of the people under the rules and regulations of the Secretary of the Interior as though it were still part of the national park, and that any patents issued to said city and county hereunder shall so specifically state.





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SAN FRANCISCO AND THE HETCH HETCHY RESERVOIR.

COMMITTEE ON THE PUBLIC LANDS,
HOUSE OF REPRESENTATIVES,
Wednesday, December 16, 1908.

The committee met at 10 o'clock a. m., Hon. Frank W. Mondell (chairman) presiding.

The CHAIRMAN. The committee will come to order. The special order for this morning is House joint resolution 184, by Mr. Kahn, "To allow the city and county of San Francisco to exchange land in the Yosemite National Park and adjacent national forest for portions of the Hetch Hetchy and Lake Eleanor Reservoir sites, in said Yosemite National Park, for the purposes of a municipal water supply."

Mr. Manson, who is the city engineer of San Francisco, and who is conversant with the steps that have heretofore been taken by the city of San Francisco to obtain a large water supply, and with the action that has been heretofore taken with regard to these particular reservoir sites, is here, and I think it would perhaps be well for the committee to hear him, and then hear from the Secretary of the Interior, who has very kindly consented to be with us this morning and who is familiar with the facts connected with the issuance of a revocable permit to the city of San Francisco to occupy a portion of these lands for the purpose of creating an increased municipal water supply.

Mr. ROBINSON. Mr. Chairman, perhaps the Secretary would desire to be heard first.

Secretary GARFIELD. Mr. Chairman, I think the order you suggested is the better one. After Mr. Manson has addressed the committee, then I could take up any subject that I wanted to speak about.

Mr. ROBINSON. I only suggested that because I thought it might serve the Secretary's convenience.

The CHAIRMAN. Mr. Manson, if you are prepared, we would be glad to hear from you. If you will be kind enough to outline, as briefly as you may be able, and give the committee a clear notion of the points at issue and the efforts that have been made by the city of San Francisco to enlarge its municipal water supply and the steps that have been taken looking to that end, we will be obliged to you.

STATEMENT OF MR. MARSDEN D. MANSON, CITY ENGINEER OF SAN FRANCISCO, ON BEHALF OF THE CITY AND COUNTY OF SAN FRANCISCO.

Mr. MANSON. I am obliged to you, Mr. Chairman, and will be as brief as possible, and in the meanwhile I will renew the suggestion made by the gentleman on my left here with regard to the Secretary presenting any matters that he may see fit to present to the committee, for the reason that this joint resolution was drawn, at the request of Mr. Kahn, in his office, and contains conditions that are intended

to guard the government control and protection of the park privileges, and it would save his time. My own is at the command of this committee at any time and to any extent, and if the Secretary at any time would like to take the matter up and present such questions as are involved, I would be pleased to give way.

The CHAIRMAN. I think it would be well, first, to have a brief history of the case.

Mr. MANSON. Very well. San Francisco is situated, as you are aware, in the dry belt in the summer, the region of summer droughts. There are no rains at all from along in May until the ensuing October and November. Then, from October and November until May the rains are extremely heavy and frequent, and all of our rainfall of any moment falls in those months. It therefore becomes necessary, in developing cities on the coast, to store very large volumes of water. The charter provisions of 1900, which came into effect in the first months of that year, provided that the city should own its own water supplies and facilities. A very exhaustive set of examinations was made by the then city engineer, later called from us by the President to take a position in charge of some Panama Canal works, Colonel Mandell, a retired officer of the United States Engineer Corps, and myself. Those examinations were conducted so as to cover the entire region possible to draw water to supply the city, and the decision was made upon the Tuolumne River, which lies due east of San Francisco and drains the 1,501 square miles on the west slope of the Sierra Nevada Mountains. That region is distinctly shown on the maps that my colleague here can lay before you at any time you wish to look them over. The second map, opposite page 95, shows you the drainage areas, rainfall, and the route of the conduits. This region of the Tuolumne lies directly east of San Francisco, something over 120 miles in a direct line, and along the route of the proposed conduits about 183 miles. The reservoirs selected lie within fifteen hundred and some odd square miles that were set apart in 1890 as a national park, and known as the "Yosemite National Park." There are two very large drainage areas in that park, one of the Merced River, flowing through the southern portion of it and passing through the far-famed Yosemite Valley. About a day's journey for an active rider, or by wagon part of the way, northerly from that is the Hetch Hetchy Valley. It is about as far along the lines of road from the Yosemite Valley as from here to the city of Baltimore, and this park in which it lies is about one-fourth the area of the State of Virginia, to the south of us. It reaches from altitudes of 2,000, 3,000, or 4,000 feet up to inaccessible altitudes of 13,000 feet above sea level, and the drainage area tributary to the reservoirs which the city seeks is uninhabitable and accessible only during three or four summer months. Other months the roads and trails are blocked with ice and snow.

The application for rights was first made in 1902. It was denied by the then Secretary of the Interior, and denied a second time upon a rehearing, referred to the Attorney-General of the United States, who decided that the law in force gave discretionary power sufficient to the Secretary of the Interior to grant that which had been previously denied. The Secretary of the Interior gave a rehearing of the case in July, 1907, restored the application to the files, granted the petition, subjecting the city to certain conditions looking to the con-

trol of the areas granted to the city for storage purposes by the Government until such time as it became absolutely essential in the development of a water supply for our Pacific coast metropolis and to bring it up to its absolute requirements, that would give the Interior Department absolute control of those lands until utilized, which would protect all irrigation interests and interfere the least possible with the rights of the Government and the users. The stipulation which you have before you in joint resolution No. 184, of May 16 last, provides for an exchange of lands, and the terms of that exchange are set forth in that resolution. The city holds at present two sets of lands. One set lies in the floor of the Hetch Hetchy Valley and constitutes the greater portion of the area of that floor.

The CHAIRMAN. Is that indicated in this pamphlet?

Mr. MANSON. That is indicated there in blue and red in the Hetch Hetchy Valley on a map opposite page 96 of the book before you. The Hetch Hetchy is surrounded by lands in brown, and the legend shows you the two types of land owned by the city. Outside of that area, entirely useless to the city except for the camping of its citizens, are areas the title to which in fee simple and patent passed to private parties before the park was set aside as such. Those areas it is desirable to restore to the park lands, for the reason that they are within the limits of the park, or the previous limits when this land was set aside—one tract is—and they afford convenient camping places, very desirable ones. I have never been through that region without camping at one or the other of them, and they are also used by the Government in policing the park, troops being stationed always at two of them, and generally in the neighborhood or immediately around them, for patrolling the region. Those holdings are shown and are designated. The Tiltill Valley you will see up to the north of the park; Cañon ranch slightly southeast, Hog ranch still farther south, and the South Fork homestead. Those aggregate: Tiltill Valley about 160 acres, Cañon ranch about 162 acres, Hog ranch 320 odd, and the South Fork homestead about 160.

Mr. SMITH. Do you not mean the Middle Fork? It seems to be indicated here as the Middle Fork.

Mr. MANSON. It is known as the South Fork homestead; it is near the Middle Fork.

The CHAIRMAN. On this map there is a tract in blue described as the Middle Fork homestead.

Mr. MANSON. Then I may be wrong, sir. I believe you are correct, Mr. Smith. I had had so much to do with the South Fork that I may have made that mistake.

The CHAIRMAN. What did you say the brown hatching on the map indicated?

Mr. MANSON. That indicates the steep walls around the Hetch Hetchy Valley arising probably to a half mile above the floor of the valley.

The CHAIRMAN. Then the outer limits of the brown hatching would indicate the outer limit of the valley wall?

Mr. MANSON. Yes, sir; about. Those are very much more distinctly defined on the Yosemite sheet of the United States Geological Survey which is before the chairman, and which I could not get additional copies of for the reason that it is out of print and the Geological Survey had no more. I took that one, very kindly granted, from

one of the files of the department. The conditions of the terms of this exchange, which you will find by consulting the resolution, are such that the Government retains control of the exchanged lands in the floor of the valley until such time as those lands shall be utilized for the actual supply of the great necessity of water to our city. If at any time in the future, under the terms of this grant, this should be abandoned and cease to be used for the highest purposes for which it can be used, it reverts to the same user.

The CHAIRMAN. I do not want to interrupt you, but I just want to bring out the facts in regard to the matter. Do I understand you that the city of San Francisco now has the fee title to the lands in the floor of the Hetch Hetchy, marked in blue and red on the map opposite page 96?

Mr. MANSON. Yes, sir. When I presented this matter to the Secretary of the Interior last May, it held options upon those lands. Those options have since been closed, the deeds are in escrow in the Central Bank in Oakland, and fifty-odd thousand dollars has been paid upon them.

The CHAIRMAN. How large is that area?

Mr. MANSON. That area is something in the neighborhood of 600 acres, and constitutes the greater portion of the floor of the Hetch Hetchy Valley. About 1,100 acres are in the floor of the valley, and the lines will extend up on the sides to such position as the honorable Secretary of the Interior may see fit to demark.

The CHAIRMAN. What is the approximate area of the reservoir which it is proposed to construct?

Mr. MANSON. That would be difficult to state just now, but it will certainly be over 1,100 acres.

The CHAIRMAN. Then, in addition to the 600 acres which you now own, it will be necessary to flood approximately 500 acres?

Mr. MANSON. Five or six hundred more, possibly, depending upon the height of the dam and the line of demarcation, which will have to be done under the direction of the Department of the Interior.

The CHAIRMAN. What you propose now is to exchange these areas marked in blue on this map and located outside of the valley but within the park?

Mr. MANSON. All but one of them. The park lines have been shifted slightly since those areas were obtained, and there is one of them, the Middle Fork homestead, which is outside of the lines, and the Hog ranch is probably also just slightly outside of the present line. They were all within the old lines of the park, but are in the adjacent reserve.

The CHAIRMAN. They are all within the forest reserve?

Mr. MANSON. Yes, sir, and immediately adjacent to the park lines, and were in the park lines until shifted, in the latter part of 1905.

The CHAIRMAN. Those tracts approximate 800 acres in area?

Mr. MANSON. I think so; yes, sir; somewhere in that neighborhood. I have them here before me.

The CHAIRMAN. Three 160-acre tracts and one 320-acre tract, approximately?

Mr. MANSON. Yes, sir.

The CHAIRMAN. And those areas you desire to exchange for like areas, acre for acre, on the floor of the valley, of the land that will be flooded?

Mr. MANSON. Submerged by the construction of a dam, and they were acquired for that purpose under the terms of the grant made by the Secretary of the Interior.

The CHAIRMAN. Have you here a copy of the revocable permit issued by the Secretary of the Interior?

Mr. MANSON. Yes, sir.

The CHAIRMAN. Will you kindly hand that to the stenographer to be made a part of the record at this point?

(The document referred to is here printed in the record in full, together with the petition of the city engineer of San Francisco on behalf of the city and county of San Francisco to the Secretary of the Interior to reopen the matter of the application for reservoir rights of way in the Hetch Hetchy Valley and Lake Eleanor sites in the Yosemite National Park.)

PETITION OF MARSDEN MANSON, CITY ENGINEER OF SAN FRANCISCO, ON BEHALF OF THE CITY AND COUNTY OF SAN FRANCISCO, TO THE SECRETARY OF THE INTERIOR DEPARTMENT, WASHINGTON, D. C., TO REOPEN THE MATTER OF THE APPLICATION OF JAMES D. PHELAN FOR RESERVOIR RIGHTS OF WAY IN THE HETCH HETCHY VALLEY AND LAKE ELEANOR SITES IN THE YOSEMITE NATIONAL PARK.

WASHINGTON, D. C., May 7, 1908.

The honorable SECRETARY OF THE INTERIOR.

SIR: On behalf of the city and county of San Francisco, I respectfully petition you to exercise your supervisory authority and reopen the matter of the application of James D. Phelan for reservoir rights of way in the Hetch Hetchy Valley and Lake Eleanor sites in the Yosemite National Park. This application was made October 15, 1901, by James D. Phelan, then mayor, in conjunction with an effort that was being made to secure an adequate and pure supply of water for the city and county of San Francisco, and was assigned to said city and county February 20, 1903, in order to carry out the original intent in making the application and that the city might be of record as the successor to any rights that may have been gained by the application. Subsequently, on December 22, 1903, the application was rejected on the ground that the Secretary of the Interior did not have power to allow such right of way within the Yosemite National Park. Thereafter I, as the representative of the said city and county, came to Washington and asked for a reconsideration of the matter. This reconsideration was granted in the form of a request for an opinion from the Attorney-General concerning the Secretary's contention that he did not have the power. The Attorney-General held that the Secretary of the Interior had full power, and that it was merely a matter of administrative judgment as to whether the application for rights of way should or should not be granted.

I was of the opinion that the steps taken by the city and county of San Francisco, through me, to have this matter reconsidered was a formal action which kept the application alive, but it seems that, according to the technical and strict interpretation of the rules of practice of the Department of the Interior, my supposition was incorrect and that the maps of location were formally rejected and returned to the city and county, where they remained and were destroyed by fire following the earthquake in April, 1906. I learned recently that the case was technically closed, but I find that the practice of your department will permit, through the exercise of supervisory authority, the curing of a technical action made final through mistake of an applicant, especially when great public interests and equities are involved.

I caused exact retracements of certified copies of the original maps of location to be made and Mr. Phelan filed them in your department in 1907. As the city engineer, directly in charge of these matters, I have certified that they are exact reproductions made under my personal direction of the original maps of location. I therefore ask that you treat them as though they were originals, and in view of all the circumstances mentioned above, the great needs of the city of San Francisco for an adequate and pure water supply, and the fact that I have been authorized to act for the city in this matter by a resolution of the board of supervisors (a certified copy of which resolution I will obtain from San Francisco at the earliest practicable moment and file with this petition), urge that you treat the application of James D. Phelan, afterwards assigned to the city of San Francisco, as though it had never technically lapsed.

As the engineer of the city, I have gathered from years of careful and scientific study of the sites themselves information concerning the capacity of the sites applied for and the tributary drainage areas, and I am confident that the city could not afford to develop the Lake Eleanor site alone without every assurance possible to be given by the Government that the Hetch Hetchy site will be available as soon as the needs of the city exceed the Lake Eleanor storage capacity. For that reason I urge that the right to use both sites be now granted in order that the city may proceed in its work with a degree of security.

If the application for both reservoir sites is granted, I offer and agree on behalf of the city that its application for the two reservoir sites may be approved upon the basis of the following conditions which will be furnished if you desire, in the form of a stipulation, approved by resolution of the board of supervisors, and duly executed under the seal of the city of San Francisco.

The city and county of San Francisco will agree to the following stipulations:

1. The city of San Francisco practically owns all the patented land in the floor of the Hetch Hetchy reservoir site and sufficient adjacent areas in the Yosemite National Park and the Sierra National Forest to equal the remainder of that reservoir area. The city will surrender to the United States equivalent areas outside of the reservoir sites and within the national park and adjacent reserves in exchange for the remaining land in the reservoir sites, for which authority from Congress will be obtained if necessary.

2. The city and county of San Francisco distinctly undertsands and agrees that all the rules and regulations for the government of the park, now or hereafter in force, shall be applicable to its holdings within the park and that, except to the extent that the necessary use of its holdings for the exclusive purpose of storing and protecting water for the uses herein specified will be interfered with, the public may have the full enjoyment thereof, under regulations fixed by the Secretary of the Interior.

3. The city and county of San Francisco will develop the Lake Eleanor site to its full capacity before beginning the development of the Hetch Hetchy site, and the development of the latter will be begun only when the needs of the city and county of San Francisco and adjacent cities, which may join with it in obtaining a common water supply, may require such further development. As the drainage area tributary to Lake Eleanor will not yield, under the conditions herein imposed, sufficient runoff in dry years to replenish the reservoir, a diverting dam and canal from Cherry Creek to Lake Eleanor reservoir for the conduct of waste, flood, or extra-seasonal waters to said reservoir is essential for the development of the site to its full capacity, and will be constructed if permission is given by the Secretary of the Interior.

4. The city and county of San Francisco, and any other city or cities which may, with the approval of the municipal authorities, join with said city and county of San Francisco in obtaining a common water supply, will not interfere in the slightest particular with the right of the Modesto irrigation district and the Turlock irrigation district to use the natural flow of the Tuolumne River and its branches to the full extent of their claims, as follows: Turlock irrigation district, 1,500 second-feet; Modesto irrigation district, 850 second-feet; these districts having, respectively, appropriated the foregoing amounts of water under the laws of the State of California.

To the end that these rights may be fully protected, San Francisco will stipulate not to store nor cause to be stored, divert nor cause to be diverted from the Tuolumne River or any of its branches any of the natural flow of said river when desired for use by said districts, for any beneficial purpose, unless this natural flow of the river and tributaries above La Grange dam be in excess of the actual capacities of the canals of said districts, even when they shall have been brought up to the full volumes named—1,500 second-feet for the Turlock irrigation district and 850 second-feet for the Modesto irrigation district.

5. The city and county of San Francisco will in no way interfere with the storage of flood waters in sites other than Hetch Hetchy and Lake Eleanor by the Modesto and Turlock irrigation districts or either of said districts for use in said districts, and will return to the Tuolumne River above the La Grange dam, for the use of said irrigation districts, all surplus or waste flow of the river which may be used for power.

6. The city of San Francisco will, upon request, sell to said Modesto and Turlock irrigation districts for the use of any land owner or owners therein for pumping subsurface water for drainage or irrigation any excess of electric power which may be generated such as may not be used for the water supply herein provided and for the actual municipal purposes of the city and county of San Francisco (which purposes shall not include sale to private persons nor to corporations), at such price as will actually reimburse the said city and county for developing and transmitting the surplus electrical energy thus sold, the price in case of dispute to be fixed by the Secretary of the Interior; and no power plant shall be interposed on the line of flow except by the said city and county except for the purposes and under the limitations above set forth.

7. The city and county of San Francisco will agree that the Secretary of the Interior shall, at his discretion, or when called upon by either the city or the districts to do so, direct the apportionment and measurement of the water in accordance with the terms of the preceding clauses of this stipulation.

8. The city and county of San Francisco, when it begins the development of the Hetch Hetchy site, will undertake and vigorously prosecute to completion a dam at least 150 feet high, with a foundation capable of supporting the dam when built to its greatest economic and safe height, and whenever, in the opinion of the engineer in charge of the reservoirs on behalf of said city and county and of the municipalities sharing in this supply, the volume of water on storage in the reservoirs herein applied for is in excess of the seasonal requirements of said municipalities, and that it is safe to do so, that such excess will be liberated at such times and in such amounts as said districts may designate, at a price to said districts not to exceed the proportionate cost of storage and sinking fund chargeable to the volumes thus liberated, the price in case of dispute to be fixed by the Secretary of the Interior; provided, that no prescriptive or other right shall ever inure or attach to said districts by user or otherwise to the water thus liberated.

9. The city and county of San Francisco will, within two years after the grant by the Secretary of the Interior of the rights hereby applied for, submit the question of said water supply to the vote of its citizens as required by its charter, and within three years thereafter, if such vote be affirmative, will commence the actual construction of the Lake Eleanor dam and will carry the same to completion with all reasonable diligence, so that said reservoir may be completed within five years after the commencement thereof, unless such times hereinbefore specified shall be extended by the Secretary of the Interior for cause shown by the city, or the construction delayed by litigation; and unless the construction of said reservoir is authorized by a vote of the said city and county and said work is commenced, carried on, and completed within the times herein specified, all rights granted hereunder shall revert to the Government.

MARSDEN MANSON.

DECISION OF THE SECRETARY OF THE INTERIOR DEPARTMENT, WASHINGTON, D. C., GRANTING THE CITY AND COUNTY OF SAN FRANCISCO, SUBJECT TO CERTAIN CONDITIONS, RESERVOIR SITES AND RIGHTS OF WAY AT LAKE ELEANOR AND HETCH HETCHY VALLEY IN THE YOSEMITE NATIONAL PARK.

DEPARTMENT OF THE INTERIOR,
Washington, May 11, 1908.

Water supply, city of San Francisco—Application for Lake Eleanor and Hetch Hetchy Valley reservoir sites, act of February 15, 1901.

THE COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: October 15, 1901, James D. Phelan, then mayor of the city of San Francisco, filed application for reservoir rights of way within the Yosemite National Park upon what are known as the Lake Eleanor and Hetch Hetchy Valley reservoir sites. This application was made under the act of February 15, 1901, and was in fact the application of the city made in the name of James D. Phelan to avoid the difficulties which beset a city if it must announce its business intentions to the public before securing options and rights necessary for its project. This is not disputed, and the fact is corroborated by his assigning to the city and county of San Francisco, on February 20, 1903, all his rights under the above application.

This application was considered by the Secretary of the Interior and, on December 22, 1903, rejected on the ground that he did not have the legal power to allow such a right of way within the Yosemite National Park. From that time to this the city has, with practical continuity, pressed its request for a permit to use these reservoir sites. The city failed, however, to take steps to reopen this case in the form prescribed by the rules of practice of this department, and for that reason technically had no application on file after December 22, 1903. On the other hand, the city's evident good faith and the strong evidence that it supposed its application was alive in the department is shown by the fact that at its request and solicitation the question of the power of the Secretary of the Interior to grant the rights of way applied for was referred to the Attorney-General, who, on October 28, 1905, held definitely that the Secretary of the Interior had full discretionary power to grant rights of way for reservoir, irrigation, or hydro-electric purposes within the park.

When the Secretary's decision of December 22, 1903, was made final, the maps of location for the two reservoir sites were returned to the city, and unfortunately were

destroyed by the fire which followed the earthquake of 1906. Fortunately, however, exact tracings of these maps had been made by the city engineer for use in court proceedings, and for that reason it has been possible to file exact reproductions of the original maps, certified by the city engineer. When the attention of the city's representative was called to the fact that technically the city had no application before the department, he, on May 7, 1908, formally filed a petition requesting the Secretary of the Interior to exercise his supervisory authority and reopen the matter of the application of James D. Phelan for the reservoir rights in question, thus treating it as though it had never lapsed. I have given the most careful consideration to this petition, and have decided that the facts mentioned above are ample grounds for exercising my supervisory power, and therefore reinstate the application of James D. Phelan, assigned to the city, as though the case had been technically kept alive since December 22, 1903, by specific compliance with the rules of practice of the department. To this end the tracings of the original maps of location as recertified by Marsden Manson, city engineer, on April 22, 1908, will be accepted in lieu of the original and treated accordingly.

Congress, on February 15, 1901, provided specifically:

- ⇒ "The Secretary of the Interior * * * is authorized * * * to permit the use of rights of way through * * * the Yosemite, Sequoia, and General Grant national parks, California, for * * * water conduits and for water plants, dams, and reservoirs used to promote * * * the supply of water for domestic, public, or other beneficial uses * * * provided that such permits shall be allowed within or through any of said parks * * * only upon the approval of the chief officer of the department, under whose supervision such park or reservation falls, and upon a finding by him that the same is not incompatible with the public interest."
- ▷ By these words Congress has given power to the Secretary of the Interior to grant the rights applied for by the city of San Francisco, if he finds that the permit is "not incompatible with the public interest." Therefore I need only consider the effect of granting the application upon "the public interest."

In construing the words of a statute the evident and ordinary meaning should be taken, when such meaning is reasonable and not repugnant to the evident purpose of the law itself. On this broad principle the words "the public interest" should not be confined merely to the public interest in the Yosemite National Park for use as a park only, but rather the broader public interest which requires these reservoir sites to be utilized for the highest good to the greatest number of people. If Congress had intended to restrict the meaning to the mere interest of the public in the park as such, it surely would have used specific words to show that intent. At the time the act was passed there was no authority of law for the granting of privileges of this character in the Yosemite National Park. Congress recognized the interest of the public in the utilization of the great water resources of the park and specifically gave power to the Secretary of the Interior to permit such use. The proviso was evidently added merely as a reminder that he should weigh well the public interest both in and out of the park before making his decision.

- ✓ The present water supply of the city of San Francisco is both inadequate and unsatisfactory. This fact has been known for a number of years and has led to a very extensive consideration of the various possible sources of supply. The search for water for the city has been prosecuted from two diametrically opposite points of view. On the one side, the water companies, interested in supplying the city with water for their own profit, have taken advantage of the long delay since it was first proposed to bring water from the Yosemite to San Francisco to look up and get control, so far as they could, of the available sources in order to sell them to the city. On the other hand, both the National Government and the city of San Francisco have made careful study of the possible sources of supply for the city. Four of five years ago the hydrographic branch of the Geological Survey, after a careful examination by engineers of character and ability, reached the conclusion that the Tuolumne River offered a desirable and available supply for the city. The same conclusion was reached by the engineers of the city of San Francisco after years of exhaustive investigation.

- ▷ I appreciate keenly the interest of the public in preserving the natural wonders of the park and am unwilling that the Hetch Hetchy Valley site should be developed until the needs of the city are greater than can be supplied from the Lake Eleanor site when developed to its full capacity. Domestic use, however, especially for a municipal supply, is the highest use to which water and available storage basins therefor can be put. Recognizing this the city has expressed a willingness to regard the public interest in the Hetch Hetchy Valley and defer its use as long as possible.

The next great use of water and water resources is irrigation. There are in the San Joaquin Valley two large irrigation districts, the Turlock and Modesto, which have already appropriated under state law 2,350 second-feet of the normal flow of water through Lake Eleanor and Hetch Hetchy. The representatives of these dis-

tricts protested strongly against the granting of the permit to San Francisco, being fearful that the future complete development of these irrigation communities would be materially hampered by the city's use of water. After repeated conferences, however, with the representatives of these irrigation districts I believe their rights can be fully safeguarded, provided certain definite stipulations to protect the irrigators are entered into by the city. Fortunately, the city can agree to this, and the interest of the two users will not conflict. On the contrary, the city in developing its water supply will to a considerable extent help the irrigation districts in their further development.

The only other source of objection, except that from persons and corporations who have no rights to protect but merely the hope of financial gain if the application of the city is denied, comes from those who have a special interest in our national parks from the standpoint of scenic effects, natural wonders, and health and pleasure resorts. I appreciate fully the feeling of these protestants and have considered their protests and arguments with great interest and sympathy. The use of these sites for reservoir purposes would interfere with the present condition of the park, and that consideration should be weighed carefully against the great use which the city can make of the permit. I am convinced, however, that "the public interest" will be much better conserved by granting the permit. Hetch Hetchy Valley is great and beautiful in its natural and scenic effects. If it were also unique, sentiment for its preservation in an absolutely natural state would be far greater. In the mere vicinity, however, much more accessible to the public and more wonderful and beautiful, is the Yosemite Valley itself. Furthermore, the reservoir will not destroy Hetch Hetchy. It will scarcely affect the canyon walls. It will not reach the foot of the various falls which descend from the sides of the canyon. The prime change will be that, instead of a beautiful but somewhat unusable "meadow" floor, the valley will be a lake of rare beauty.

As against this partial loss to the scenic effect of the park, the advantages to the public from the change are many and great. The city of San Francisco and probably the other cities on San Francisco Bay would have one of the finest and purest water supplies in the world. The irrigable land in the Tuolumne and San Joaquin valleys would be helped out by the use of the excess stored water, and by using the electrical power not needed by the city for municipal purposes to pump subterranean water for the irrigation of additional areas the city would have a cheap and bountiful supply of electric energy for pumping its water supply and lighting the city and its municipal buildings. The public would have a highway at its disposal to reach this beautiful region of the park heretofore practically inaccessible. This road would be built and maintained by the city without expense to the Government or the general public. The city has options on land held in private ownership within the Yosemite National Park, and would purchase this land and make it available to the public for camping purposes. The settlers and entrymen who acquired this land naturally chose the finest localities and at present have power to exclude the public from the best camping places, and, further, the city in protecting its water supply would furnish to the public a patrol to save this part of the park from destructive and disfiguring forest fires.

The floor of the Hetch Hetchy Valley, part of which is owned privately and used as a cattle ranch, would become a lake bordered by vertical granite walls or steep banks of broken granite. Therefore, when the water is drawn very low it will leave few muddy edges exposed. This lake, however, would be practically full during the greater part of the tourist season in each year, and there would be practically no difficulty in making trails and roads for the use of the tourists around the edges of the valley above high-water mark. The city of San Francisco, through its regularly authorized representative, has, in order to protect the interests most directly involved, agreed to file with the Secretary of the Interior a stipulation approved by specific resolution of the board of supervisors and duly executed under the seal of the city of San Francisco as follows:

"1. The city of San Francisco practically owns all the patented land in the floor of the Hetch Hetchy Reservoir site and sufficient adjacent areas in the Yosemite National Park and the Sierra National Forest to equal the remainder of that reservoir area. The city will surrender to the United States equivalent areas outside of the reservoir sites and within the national park and adjacent reserves in exchange for the remaining land in the reservoir sites, for which authority from Congress will be obtained if necessary.

"2. The city and county of San Francisco distinctly understands and agrees that all the rules and regulations for the government of the park, now or hereafter in force, shall be applicable to its holdings within the park, and that, except to the extent that the necessary use of its holdings for the exclusive purpose of storing and protecting water for the uses herein specified will be interfered with, the public may have the full enjoyment thereof, under regulations fixed by the Secretary of the Interior.

"3. The city and county of San Francisco will develop the Lake Eleanor site to its full capacity before beginning the development of the Hetch Hetchy site, and the development of the latter will be begun only when the needs of the city and county of San Francisco and adjacent cities, which may join with it in obtaining a common water supply, may require such further development. As the drainage area tributary to Lake Eleanor will not yield, under the conditions herein imposed, sufficient run-off in dry years to replenish the reservoir, a diverting dam and canal from Cherry Creek to Lake Eleanor Reservoir for the conduct of waste flood or extra-seasonal waters to said reservoir is essential for the development of the site to its full capacity, and will be constructed if permission is given by the Secretary of the Interior.

"4. The city and county of San Francisco, and any other city or cities which may, with the approval of the municipal authorities, join with said city and county of San Francisco in obtaining a common water supply, will not interfere in the slightest particular with the right of the Modesto irrigation district and the Turlock irrigation district to use the natural flow of the Tuolumne River and its branches to the full extent of their claims, as follows: Turlock irrigation district, 1,500 second-feet; Modesto irrigation district, 850 second-feet, these districts having, respectively, appropriated the foregoing amounts of water under the laws of the State of California.

"To the end that these rights may be fully protected, San Francisco will stipulate not to store nor cause to be stored, divert, nor cause to be diverted from the Tuolumne River or any of its branches, any of the natural flow of said river when desired for use by said districts for any beneficial purpose, unless this natural flow of the river and tributaries above La Grange dam be in excess of the actual capacities of the canals of said districts, even when they shall have been brought up to the full volumes named, 1,500 second-feet for the Turlock irrigation district and 850 second-feet for the Modesto irrigation district.

"5. The city and county of San Francisco will in no way interfere with the storage of flood waters, in sites other than Hetch Hetchy and Lake Eleanor by the Modesto and Turlock irrigation districts or either of said districts for use in said districts, and will return to the Tuolumne River above the La Grange dam, for the use of said irrigation districts, all surplus or waste flow of the river which may be used for power.

"6. The city of San Francisco will upon request sell to said Modesto and Turlock irrigation districts for the use of any land owner or owners therein for pumping sub-surface water for drainage or irrigation any excess of electric power which may be generated such as may not be used for the water supply herein provided and for the actual municipal purposes of the city and county of San Francisco (which purposes shall not include sale to private persons nor to corporations), at such price as will actually reimburse the said city and county for developing and transmitting the surplus electric energy thus sold, the price in case of dispute to be fixed by the Secretary of the Interior; and no power plant shall be interposed on the line of flow except by the said city and county except for the purposes and under the limitations above set forth.

"7. The city and county of San Francisco will agree that the Secretary of the Interior shall, at his discretion, or when called upon by either the city or the districts to do so, direct the apportionment and measurement of the water in accordance with the terms of the preceding clauses of this stipulation.

"8. The city and county of San Francisco, when it begins the development of the Hetch Hetchy site, will undertake and vigorously prosecute to completion a dam at least 150 feet high, with a foundation capable of supporting the dam when built to its greatest economic and safe height, and whenever, in the opinion of the engineer in charge of the reservoirs on behalf of said city and county and of the municipalities sharing in this supply, the volume of water on storage in the reservoirs herein applied for is in excess of the seasonal requirements of said municipalities, and that it is safe to do so, that such excess will be liberated at such times and in such amounts as said districts may designate, at a price to said districts not to exceed the proportionate cost of storage and sinking fund chargeable to the volumes thus liberated, the price in case of dispute to be fixed by the Secretary of the Interior; provided, that no prescriptive or other right shall ever inure or attach to said districts by user or otherwise to the water thus liberated.

"9. The city and county of San Francisco will, within two years after the grant by the Secretary of the Interior of the rights hereby applied for, submit the question of said water supply to the vote of its citizens as required by its charter, and within three years thereafter, if such vote be affirmative, will commence the actual construction of the Lake Eleanor dam and will carry the same to completion with all reasonable diligence, so that said reservoir may be completed within five years after the commencement thereof, unless such times hereinbefore specified shall be extended by the Secretary of the Interior for cause shown by the city, or the construction delayed by litigation; and unless the construction of said reservoir is authorized by

a vote of the said city and county and said work is commenced, carried on, and completed within the times herein specified, all rights granted hereunder shall revert to the Government."

In considering the reinstated application of the city of San Francisco, I do not need to pass upon the claim that this is the only practicable and reasonable source of water supply for the city. It is sufficient that after careful and competent study the officials of the city insist that such is the case. By granting the application opportunity will be given for the city, by obtaining the necessary two-thirds majority vote, to demonstrate the practical question as to whether or not this is the water supply desired and needed by the residents of San Francisco.

I therefore approve the maps of location for the Lake Eleanor and Hetch Hetchy reservoir sites as filed by James D. Phelan and assigned to the city of San Francisco, subject to the filing by the city of the former stipulation set forth above, and the fulfillment of the conditions therein contained.

Very respectfully,

JAMES R. GARFIELD,
Secretary.

The CHAIRMAN. The desire of the city of San Francisco, then, is to acquire title in fee to the lands she desires to submerge, and over which she now has a revocable permit issued by the Secretary?

Mr. MANSON. To the remainder of the lands—that is it, exactly—which she has not now. She has two types of lands in the floor of the valley that will be submerged. To the greater portion of the floor of the valley she now has fee-simple title, and as to the remainder she wishes to exchange lands acquired for that purpose from the Government.

Mr. SMITH. Do I understand that you desire a fee-simple title, in addition, to the lands that will be submerged?

Mr. MANSON. Yes, sir.

Mr. SMITH. I thought you said a moment ago that it depended on whether you would use that.

Mr. MANSON. The use of those lands depends entirely on the Department of the Interior approving the grant after the conditions are fulfilled, and that is one of the conditions both of the title and the grant under this resolution. That is a condition of the title.

Mr. SMITH. But it is not a fee title, then?

Mr. MANSON. Yes, sir; and we wish a fee title for this purpose. We will have to expend \$40,000,000 or \$50,000,000 in developing this storage. If we attempt to make a bond issue upon the terms of a revocable permit, as described under the law of February 15, 1901, objections could be made to the sale of those bonds upon the ground that the issue was based on a merely revocable permit.

The CHAIRMAN. What you desire to do, as I understand it, is to secure legislation under which the title to all of the lands included in the reservoir site shall be the same. In other words, you have now a fee to approximately half of the lands to be submerged?

Mr. MANSON. Yes, sir.

The CHAIRMAN. You desire a fee to the remainder of the lands which will be submerged and propose to exchange lands with the Government for the purpose of acquiring that fee. You would have no objection, however, to having the granting of the fee dependent upon such action by the city as would assure the Secretary of the Interior before the grant was made that the city was to build, and would build, and maintain the reservoir?

Mr. MANSON. To have what, sir?

The CHAIRMAN. I say, you would have no objection to having the granting of the fee or having the exchange of the lands dependent

upon your submitting satisfactory proof to the Secretary that you intend to and will build and maintain this reservoir?

Mr. MANSON. Absolutely; certainly not, sir. Our necessities compel the development of some great storage reservoir, and it would be recognized throughout our entire voting population, which recently voted 6 to 1 in favor of this development, that it is a necessity that we have to meet. We can not develop, we can not grow, and you will find in the terms of the grant by the Secretary of the Interior that very point guarded. It gives absolute control of that area, not only what we purchased but the remainder of it as the park usage dictates and requires, until such time as the necessities of its development shall arrive and be actually accomplished, and the people have voted in favor of such a thing already by a vote of 6 to 1, and more. Moreover, in the latter part of the joint resolution, No. 184, is a provision that the deeds of the exchanges of patents, or whatever instruments may be necessary and prescribed by the Secretary of the Interior in making this exchange, shall contain a stipulation to that effect.

Mr. ROBINSON. Are there any vested private rights affected by this proposed legislation?

Mr. MANSON. None whatever that I know of, sir. It is exclusively applied to the storage of water in those particular areas under the laws of the State of California, which permit the storage of flood waters when one has an area on which to store them.

Mr. ROBINSON. What is the area of the lands which you propose to exchange for those within the valley, the total area?

Mr. MANSON. We have not been able to demark that exactly yet, sir, because the matters have not been perfected to that extent, but that will probably be demarked under the direction of the Secretary of the Interior; but whatever that is, it will be acre for acre for lands such as are indicated there in blue as under the ownership of the city.

Mr. FERRIS. Do I understand that the city of San Francisco owns those four ranches that you mentioned?

Mr. MANSON. Yes, sir.

Mr. FERRIS. And those are the tracts of land that you propose to exchange for the land that you want to flood?

Mr. MANSON. Exactly, sir.

Mr. CRAIG. But not all those areas are inside of the park?

Mr. MANSON. They are all inside the old park lines, which have been modified since these arrangements were instituted, and the park line has been shifted some 6 miles to the east of where it was originally, and two of those areas are in that limit, but they are in the immediate adjacent forest reserve and are very desirable camping grounds, utilized on all occasions when people pass in and out in trains passing through them. The other two areas are within the park limits, and the Tiltill Valley, which is off slightly to the northeast there is one of the most beautiful valleys. The superintendent of the park, Major Benson, always goes up in there at least twice a summer. I have seen him en route there twice myself. He takes his equipage and stays up in there and handles his business from that point, because of its superior location and beautiful surroundings, and on account of the small places for camping and keeping horses it is one of the most attractive and well-situated points that I know of. If you will pardon me one minute, I would state that when the city acquired that from the same

owner it was with great difficulty I could persuade the owner to let the city have it. He wanted to preserve it for his own use as a summer resort, fence it up, and retain it until the Government should acquire it.

Mr. HOWLAND. Is there any corresponding value of these different lands which you propose to exchange? Is there any difference in the market value, or is there any market value?

Mr. MANSON. There was no difference when purchased. We paid \$150,000 for the entire tract, and there was no difference made and none is made in the prices between those in the floor of the Hetch Hetchy Valley and those in the Tiltill Valley, those in the Cañon ranch, those in the Hog ranch, and those in the Middle Fork homestead. A lump sum was paid for them, and the same price was paid for this little area shaded in red, as you will see from the legend on the map, or it was agreed to be paid and part is paid already, so that those lands were acquired under the terms—those terms were perfected under the terms of the grant by the Secretary of the Interior at the same price, and for the specific purpose, none other, of making this exchange. It would be absolutely useless to the city, of course.

The CHAIRMAN. If none of the members of the committee care to interrogate Mr. Manson any further, I think perhaps it would be well at this point to hear from the Secretary, and I think there will be some questions we would like to ask of him.

Mr. GRONNA. As I understand it, the lands that are marked in red and blue are lands that are owned by individuals; is that correct?

Mr. MANSON. They were owned by individuals under patents granted by the Government prior to the setting apart of the area as a national park, but now are owned by the city, and the deeds in escrow are held and the payments have been made, over \$150,000, upon them.

The CHAIRMAN. If none of the members of the committee care to interrogate Mr. Manson any further now, I think perhaps it would be well at this point to hear from the Secretary in regard to the general question.

STATEMENT OF HON. JAMES R. GARFIELD, SECRETARY OF THE INTERIOR.

The CHAIRMAN. Mr. Secretary, the committee would like to be informed, in a general way, the connection of your department with this granting of this revocable right of way, and as to what developed during the hearings had before you as to the necessities of the city of San Francisco in this matter, and also as to the effect of this water storage upon the park and the forest reserve, as to how it will affect the interests of the general public, as we must necessarily consider the interests of the general public in this matter, as well as those of the city of San Francisco.

Secretary GARFIELD. The application, as it was presented to me, came up on the motion for a reopening of the case, which had theretofore been closed by the action of my predecessor in declining to grant the request of the city to permit the use of the floor of this valley for storage purposes. I first made careful investigation of the law and the decision of the Attorney-General, and found that under that decision it was clear that the Secretary of the Interior had power, under

the act of Congress, to grant this application, if he should deem it for the public interest to do so. I thereafter advised the city of San Francisco to that effect, and while in San Francisco a year ago last summer I had a public hearing there and went over very carefully the various facts relating to the condition of the application, and there appeared various parties in interest, including not only the city representatives, but as well the representatives of certain irrigation districts, the Turlock and Modesto districts, which lie below the headwaters of the Hetch Hetchy, and thereafter giving opportunity to all interested parties to file in detail their briefs and exchange briefs.

These gentlemen came to Washington and we went over in detail again the conditions that existed in that district. Those conditions, in brief, were these: The Modesto and Turlock irrigation districts below had acquired and were using valuable water rights for the development of their irrigation projects. There were certain private holdings in the floor of the Hetch Hetchy Valley and in the surrounding park and forest reserve area. The city had acquired, by option, holdings in the floor of the valley to the extent as stated by its representative here, and had also acquired a number of holdings outside, as indicated by the representative. The points that I gave especial consideration to in determining what action the Government ought to take were these: The city of San Francisco had been making every effort to obtain for its citizens, and the citizens in the immediate surrounding vicinity there, the best, purest, and largest water supply. I took the view that, so far as the Federal Government was authorized, it should be of help to the citizens of any of these cities, not only San Francisco, but elsewhere, to enable them to obtain that kind of a water supply, believing that the domestic use was the highest use to which water could be put. There were, in connection with this question, a number of matters of difficulty; private interests—that is, conflicts between the existing water company in San Francisco and companies or individuals who were seeking to have the city acquire their water rights, instead of undertaking to develop the Hetch Hetchy, as was requested by the city. I declined to enter into a discussion of the relative merits or demerits of any of these various plans, because they involved most intricate engineering questions in almost every instance, as well as questions of cost, both of which questions I felt were matters for the city to determine and not for the Federal Government to determine.

The matter before me was simply whether or not the Federal Government ought to give the citizens of San Francisco an opportunity to use this valley and the adjacent valley, the Lake Eleanor site, for purposes of obtaining a domestic water supply, if those citizens deemed that this was the most available and the purest, and the question of cost was a matter for them to determine, not for the Government. I likewise considered most carefully, as the Government should, the question of the rights of the irrigating district below. They were not only valuable rights, but were likewise rights that had been very highly developed by the citizens in those localities, and, as I stated to the representatives of the city, I should take no action that did not absolutely protect the people who had developed the irrigation projects below there in their rights to use or impound the water upon which they had filed. As to the private property owned in the park and on the floor of the park, those were matters that I

stated to them would have to be settled by submission of these matters probably to Congress, because I had no authority under the general acts to patent to the city of San Francisco the remaining unappropriated lands on the bed of the valley, nor could I without an act of Congress accept other property in exchange for those, and therefore the proposition was made that the city, having acquired these private rights, would offer in exchange, acre for acre, as nearly as could be exchanged on the smallest equal subdivision, land which it owned outside for the unappropriated land which remained on the floor of the valley. That proposition seemed to me an eminently fair one, because it not only cleared the question of title on the floor of the valley, but also cleared from the park and forest reserve area those private holdings which were now used for camping purposes by the private owners, under an arrangement with individuals or an arrangement with the Government. After a full consideration of all of these points to which I have referred I reached the conclusion, without any hesitation in my own mind, that it was the duty of the Federal Government to aid the city of San Francisco in this regard, if we could reach an agreement that was satisfactory to all the various interests concerned.

There was serious opposition on the part of a number of citizens, not only of California, but throughout the country, to any action by me that would, as they stated, abandon the Hetch Hetchy as a valley and destroy, as they felt, one of the great and wonderful natural beauties of that section of the country. I fully appreciated that feeling on the part of those gentlemen, and fully appreciated the obligation that Congress had placed upon me to preserve those tracts for the purpose, not only of the nation's playgrounds, but for the purpose of preserving the great curiosities and great beauty of that region. On the other hand, in weighing the two sides of this question, I felt that there could be no doubt but that it should be resolved in favor of the citizens of San Francisco, because this use of the valley would not destroy it as one of the most beautiful spots in the West. It would simply change the floor of the valley from a meadow to a beautiful lake, and it could be so constructed as not to interfere with the access of people to that portion of the park. It would mean, of course, that there would not be that same freedom in camping that there otherwise would be, because it would be necessary to protect the watershed there from pollution, but that would be the only interference with the opportunity of individuals to visit and enjoy that park. I therefore made the agreement which appears in the final decision which I made in this matter, which has been presented to you here this morning. That agreement was made after the most careful conference with the representatives of the irrigation districts, and a final and unanimous agreement by all that we had protected fully the rights of these various interested parties. The provisions of the permit appear at the end of the decision, I think nine or ten special clauses; and I believe have most carefully safeguarded the interests of the public in the issuing of this permit. The city of San Francisco obtains this right subject to very carefully drawn provisions.

These provisions, in brief, are that, in the first instance, they should come to Congress for this very purpose which the resolution we are considering intends to carry out, namely, to authorize the exchange of

these lands. Thereafter the use of these lands is subject to the regulation of the Secretary of the Interior, and the only use which the city itself can permanently enjoy will be that which is necessary and appurtenant to the construction of the reservoir and the use for water purposes. In case the city fails to carry out the terms of the permit within the time specified in the last two clauses, then all the rights shall revert to the Federal Government, and the titles to all lands which they might have acquired will also revert to the Federal Government, so that it does not afford an opportunity for the city of San Francisco to use this permit for any purpose other than that which is stated in the permit itself, which has for its only purpose the use of water by the citizens of San Francisco. The rights of the people of irrigation districts below are well guarded, so that they will not be denied or deprived of the rights that they had theretofore acquired for irrigation purposes. The language of a condition of the grant was that this question should be submitted to the voters of the city, so that there should be the fullest and most careful explanation and understanding of this agreement with the Federal Government, and I am advised by the reports sent me by the city officials that that election has been held and the results up to this time have been adopted. I think that, Mr. Chairman, covers all, in brief, that has been done by the department.

MR. SMITH. I would like to ask one question which may possibly have been covered while I was out of the room; if so, I will not ask to have it repeated. Are any water appropriations for hydro-electric purposes affected in any way by this permit?

Secretary GARFIELD. They are not.

MR. SMITH. Are there any appropriations on these streams?

Secretary GARFIELD. I am advised not.

MR. SMITH. None of the waters which the city would use are in any way used, or contemplated to be used, for electric generation?

Secretary GARFIELD. Except in so far as stated in the body of the grant, in clause 6:

6. The city of San Francisco will upon request sell to said Modesto and Turlock irrigation districts, for the use of any land owner or owners therein for pumping sub-surface water for drainage or irrigation, any excess of electric power which may be generated, such as may not be used for the water supply herein provided and for the actual municipal purposes of the city and county of San Francisco (which purposes shall not include sale to private persons nor to corporations), at such price as will actually reimburse the said city and county for developing and transmitting the surplus electrical energy thus sold, the price in case of dispute to be fixed by the Secretary of the Interior; and no power plant shall be interposed on the line of flow except by the said city and county, except for the purposes and under the limitations above set forth.

MR. SMITH. What does that last expression refer to—that the city of San Francisco will allow no person to construct a power plant; does it prevent any private enterprise from constructing a power plant?

Secretary GARFIELD. The purpose was not to allow any interference with such power as the city might need for its own municipal purposes, excluding the right to sell electric power to private persons or to corporations. In other words, the city is not going into the electric business for sale, but it may develop such power as may be necessary for its municipal purposes.

MR. SMITH. That is a different proposition from the one involved in Los Angeles?

Secretary GARFIELD. Yes; it is.

MR. SMITH. What I want to find out is, are there any appropriations of water claimed by any individuals or corporations in this watershed, or along the same stream, that would be in any way affected by the accomplishment of this legislation?

Secretary GARFIELD. None that have been brought to my attention. I have no remembrance of any suggestion of any location, or attempted location, for that purpose. Can you tell me about that, Mr. Manson?

MR. MANSON. I know of no appropriation. But there is one point I would like to make clear, Mr. Secretary and Mr. Chairman: That is, that that was imposed by virtue of the fact that there might be a possibility that after this water got in control of the city ditches and canals and conduits, it might be reverted and not returned, if used for power, to the channel and go down to the irrigation districts which depended upon it and needed it, and in order to guard against the possibility of at any time in the remote future the city granting to anybody, or taking the authority itself, of diverting this water as it flowed outside of the limits of parks, and so on, for other uses, and not returning it to the channel of the Tuolumne River for use by the irrigators, that provision was inserted in very rigid form. What I wanted to find out was—I am not here to represent any power company—but I wanted to know whether there have been any filings of water rights on the streams affected by this grant.

Secretary GARFIELD. None that I know of.

MR. SMITH. You would know if any had been?

MR. MANSON. No, sir; I have not searched the records of Tuolumne County to find that out.

MR. SMITH. I assume that you know what substantial water rights exist on those streams before you go in there and spend some millions of money?

MR. MANSON. No, sir. We would store water and use it. If we interfere with any private rights or corporate rights, those would have to be established and determined by the courts of the State of California.

MR. SMITH. I suppose you would know in advance, or you know at this time, whether there are any such?

MR. MANSON. I know of none that we would interfere with at all.

MR. SMITH. I assume that if there are any you know it. You are not going into this scheme without knowing what there is before you in the way of adverse rights to the water?

MR. MANSON. There are, that I know of, rights on the middle fork of the Tuolumne River which are in no way interested in this, rights on the south fork of the Tuolumne River which are in no way affected by this, and at the points of diversion to the city of those stored waters and the use of those waters I know of no rights whatever that could interfere with the city's use of the water supply.

MR. SMITH. Would the use contemplated by this resolution, the exclusive use, interfere in any way with those water rights which you say have been located on the middle and south forks?

MR. MANSON. Not to the slightest degree. They are another fork entirely and out of any reach.

THE CHAIRMAN. Mr. Secretary, I have not read carefully the decision granting this right of way. I assume, however, that all rights to the development of water power contemplate nothing more than

such development as might be had with water as it comes over the dam?

Secretary GARFIELD. That is all.

The CHAIRMAN. Of course, the city would have a right to develop whatever head and power might be developed in that way?

Secretary GARFIELD. Yes.

The CHAIRMAN. On the question that the gentleman from California has just raised, I want to call the attention of the committee to a telegram which I received, as the chairman of the committee, on December 14:

OAKLAND, CAL., December 14, 1908.

HON. FRANK W. MONDELL,

Chairman Committee on Public Lands

of the House of Representatives, Washington, D. C.:

National Park Electric Power Company protests against granting to city of San Francisco any preferential or other rights which conflict with its rights to use the waters flowing in the Tuolumne River, California. Said company has expended about \$40,000 in perfecting its said rights and will in no wise interfere with said city's proposed use of said waters for municipal uses. Only conflict possible would be use by said city in generating power by said city for sale outside of said city, and that would be beyond its charter powers. Any bill granting said city rights should contain clause subjecting such rights to pending applications or accrued rights on said river.

A. C. KUHN,

President National Park Electric Power Co.

I assume that whatever this committee does, it will not pass on the question of water rights in the sovereign State of California.

Secretary GARFIELD. This pending resolution has nothing to do with that whatever.

The CHAIRMAN. Are there any members of the committee who desire to make any further interrogations in regard to the matter?

Mr. ROBINSON. I would like to know something about the terms of the resolution itself. I have had little opportunity to examine it. I see a number of "Whereases" prefixed, and I would like to know whether, in the opinion of the gentlemen who have investigated, this resolution is properly expressed?

Mr. KAHN. The resolution was drawn by the law officer of the Department of the Interior.

Mr. ROBINSON. That is what I wanted to know.

Secretary GARFIELD. The resolution as drawn conforms to the terms of the permit as set forth in paragraphs 1 and 2 of the terms of the permit providing for the exchange of the lands on the floor of the valley for those lying outside of and within the park and forest-reserve area.

Mr. KAHN. Mr. Woodruff drew the resolution?

Secretary GARFIELD. I believe so; it came from his office, at any rate.

Mr. ROBINSON. Unless some gentleman present wants to make a further statement regarding the matter, I think, as far as I am concerned, I am ready to proceed to dispose of the resolution.

The CHAIRMAN. I think there are some gentlemen who desire to interrogate Mr. Manson in regard to the matter briefly. Mr. Englebright represents the district in California in which the Hetch Hetchy Valley is located. Would you care to interrogate Mr. Manson in regard to this matter or make any statement in regard to it, Mr. Englebright?

MR. ENGLEBRIGHT. I will make a brief statement, and then I would like to ask a few questions of Mr. Manson. My position in this matter is that I have no opposition whatever to San Francisco obtaining all the rights that it needs and requires in connection with this water supply in Hetch Hetchy Valley. I have not given this subject consideration until the last couple of days, and did not know that there was going to be a hearing on it, but as this Hetch Hetchy Valley is in my district, and as all the talk heretofore has been between the interested parties, there are just a few points that I want to bring out.

One is, that this land that is spoken of is partly in the national park and partly out of it in a national forest reserve, or a national forest. As I understand it, Mr. Manson, the two blue tracts of land on the southwest corner are in the forest reserve and not in the park?

MR. MANSON. They are now in the forest reserve. At the time these negotiations were conducted they were a part of the national park, the line having been shifted some 6 miles or more to the east after these negotiations were inaugurated, and, being in the same ownership, it would be necessary to acquire it. In approaching the park and traveling from one portion of it to another the trails and direct lines of approach lie through these two tracts, formerly in the national park, now in the immediate adjacent national reserve, so that they were, first of all, acquired, the negotiations included them for the reason I have stated, and they are on the lines of the movement of visitors to the park, who always camp on them whenever it is found convenient.

MR. ENGLEBRIGHT. Very recently I have had, right in that immediate locality, some very hot stuff from the people there in regard to forest reserves. This land, being in private ownership, is taxable by the county, whether it is in a national park or in the forest reserve. That is correct, is it, Mr. Manson?

MR. MANSON. All private property in the State is taxable.

MR. ENGLEBRIGHT. Can you tell me, Mr. Manson, what this property is assessed for at the present time?

MR. MANSON. I can not.

MR. ENGLEBRIGHT. There is one proposition there—that in transferring this property to the National Government and to the city of San Francisco, when it becomes a public reservoir, it will have the effect of withdrawing all that property from taxation within the county, and I for one, representing that county, would like to know what effect that would have on the taxes of that county.

THE CHAIRMAN. There are about 800 acres of it.

MR. ENGLEBRIGHT. I do not know what it is assessed for. To my idea of this matter, this could be reached in better shape and preserve the rights of the public than with this bill. If the city of San Francisco would deed to the National Government all their rights to the lands in Hetch Hetchy Valley, then an easement could be given to the city of San Francisco which would fully protect them and leave everything in shape. That would not mix up these outside interests, and that would leave the complete control of that whole section of country in the hands of the Secretary of the Interior as a national park. It would also protect the public. As it is a lake, it will be one of great natural beauty. There will be fine fishing in it and boating, and so on, which would make to that extent the lake an improvement to the park, but I do not think

the bill as it stands now protects the people sufficiently in that line. There is also a question of roads and accessibility that should be considered in that line. My idea of that subject is that there should be a little careful consideration to questions along that line before final action is taken.

Mr. VOLSTEAD. I do not know whether there is a trail along the side of the valley, but if there is, would that trail be submerged in water in case there is a reservoir made there?

Mr. MANSON. Let me have that question.

Mr. VOLSTEAD. I say, will the storage of the water in that valley prevent the use of the trail?

Mr. MANSON. The trail passing through the valley?

Mr. VOLSTEAD. Yes.

Mr. MANSON. Yes, sir; of course.

Mr. VOLSTEAD. Is that a trail built by the Government?

Mr. MANSON. No, sir; but it is a trail improved by the Government. That trail has been in existence and use, and I passed over it frequently prior to the Government's doing anything whatever upon it.

Mr. VOLSTEAD. Would not the Government be called upon to rebuild that trail in some other location higher up in the valley?

Mr. MANSON. Unless in the regulations imposed by the Secretary of the Interior it should be prescribed that the city should build it.

Mr. VOLSTEAD. Is there any provision for that in this contract?

Mr. MANSON. I suggested it; but it could be done, sir, under the control the Secretary has.

Mr. VOLSTEAD. I do not know anything about the situation out there, but I happened to see a few mountain trails that I thought cost some money.

Mr. MANSON. Some of them cost enormous sums. Three or four thousand dollars a mile is frequently expended on some of them.

Secretary GARFIELD. In looking that over I saw very clearly that with the lines that were suggested by the city engineer, abutting that area, there would be ample space left for the construction of a road along the edge of the lake, and under the terms of that permit those must be constructed by the city or in conformity of the order of the Secretary of the Interior in such manner as he may determine.

The CHAIRMAN. Do you think the stipulations of the permit are broad enough to cover that?

Mr. MANSON. I have no doubt that that would be one of the conditions which could and should be imposed on a final construction of the department.

Mr. VOLSTEAD. Unless there is some specific provision, I should judge from the reading of that resolution that the city would become absolute owners of that property as soon as they commenced to construct their reservoir.

Secretary GARFIELD. They would, so far as those particular lands are concerned, but the further conditions of the permit require that in the general use of the valley outside of these lands, as for the construction of the dam and the erection of the park, they must conform to all rules and regulations and conditions that the Secretary of the Interior may make.

Mr. VOLSTEAD. Yes, but that is not a part of the resolution.

Secretary GARFIELD. It is not a part of the resolution for the reason that the resolution is dealing with simply those provisions of

the permit that had to do with the exchange of the land, and the resolution does not in any way attempt to change, modify, or add to that permit. It simply is an attempt to carry out section 1 and, I believe, section 2 of the permit, which have to do with the exchange of the land.

MR. KAHN. The grant, Mr. Secretary, which you made, is under certain provisions of existing law which give you the power to make a grant, reserving certain rights to the Government and imposing certain conditions upon the receiver of the land?

Secretary GARFIELD. Quite right.

**STATEMENT OF HON. JAMES K. NEEDHAM, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF CALIFORNIA.**

MR. NEEDHAM. Might I be heard on this for a moment, Mr. Chairman?

The CHAIRMAN. Mr. Needham, we would be very glad to hear from you.

MR. NEEDHAM. I do not come here to oppose the purpose of this legislation, but I want to be sure that the resolution itself accomplishes no more than the purpose stated. My interest in this matter is that I have lived for twenty years on this stream, in the Modesto irrigation district, and not only as a resident of that district, but representing that portion of the State in the House of Representatives, I think it is my duty to be sure that the grant which was made last spring, and which is satisfactory, on the whole, to those interested, is not enlarged. This being an act of Congress subsequent to the time the grant was made, it would enlarge the grant if it should be so construed. It seems to me there is no provision in the resolution that places the parties in the same position that they are before this resolution is passed, and therefore it seems to me there should be added a proviso to that effect, making clear that if the reservoir is not constructed the lands should revert to the respective parties, because I fear that the courts might construe, notwithstanding the powers of the Secretary of the Interior to make the grant, that this, being a subsequent act of Congress, would supersede and modify, because, Congress being superior in these matters, the action might be held by the courts to have that effect, and in view of the fact that the parties here have stated before the committee that that is their purpose, it seems to me there could be no objection to putting such a proviso in the bill.

MR. VOLSTEAD. Let me ask, if you will excuse me for interrupting you, is the contract that is spoken of existing between the city and the National Government; is there such a thing?

MR. NEEDHAM. That is the grant or revocable permit which has been referred to here several times this morning.

MR. VOLSTEAD. To what extent does that permit go?

MR. NEEDHAM. That is a permit under the act of February 15, 1901, or rather a grant by the Secretary of the Interior, giving these rights of way in the national park upon certain conditions. The city having entered into these stipulations, that grant is now in existence. The only purpose I have is to be sure that this bill does not enlarge the terms of the grant, and I am inclined to think that it does.

The CHAIRMAN. The committee would, of course, very carefully consider the language of the legislation before passing upon it. Mr. Needham.

Mr. NEEDHAM. That could be easily remedied by simply inserting a proviso placing the parties in the same position they are now.

The CHAIRMAN. My own idea at this time is that it might be differently and more briefly expressed, and provide that no exchange should be made until the Secretary was satisfied that the city was prepared to go on. However, you will notice that this proviso is to the effect that the patent shall not be a fee in all respects; that it still gives the Secretary the control over the whole land until the reservoirs are built. The committee, however, might conclude that it would be better to provide that the transfers might be made when the city of San Francisco satisfied the Secretary that they were ready to go on with the work.

Secretary GARFIELD. I might suggest, in connection with that, that there be a provision there to the effect that this measure does not in any way increase or enlarge the grant or the power; it is merely for the purpose of carrying into effect the provisions. That might meet the suggestion made, because, as I understand it, it is not the intention of the city, and certainly not the intention of the department, that there should be additional power granted.

Mr. VOLSTEAD. It seems to me that if this resolution passes it practically supersedes the arrangement made. That is absolutely a fee without any condition or qualification.

The CHAIRMAN. To a limited amount of land. However, if they had this fee provided in the resolution as it now stands, you will note it would not be possible for them to build storage reservoirs to impound water without the consent of the Secretary of the Interior, because that can not be done on lands now, even if the party owns them himself.

Mr. NEEDHAM. There is no revocable clause at all in this resolution. The simple provision is that the public shall have the use and enjoyment of the Yosemite National Park as far as the rights of the said city and county under said permit are concerned—

Provided, That until reservoirs are actually established in said reservoir sites any land patented hereunder to said city and county shall continue subject to the free use and enjoyment of the people, under the rules and regulations of the Secretary of the Interior, as though it were still a part of the national park.

That is practically the only provision. There is a grant in fee simple of the land, and then the further proviso that if the reservoir is not built they shall have the free use and enjoyment of this land. There should be a revocable clause, in my judgment, in this bill to completely accomplish what it is intended this legislation should accomplish.

The CHAIRMAN. As I understand, Mr. Needham, you would have no objection to legislation whereby the city should acquire fee title to the lands which it submerges in that valley?

Mr. NEEDHAM. Provided it is used for that purpose.

The CHAIRMAN. Which it submerges?

Mr. NEEDHAM. I think it should go further than that. They must carry out the terms of the grant. They might submerge the land and then do nothing further, and then there would be a vast reservoir that would not have any public use. Of course, it would be of advantage to us to have that reservoir built and then abandoned, but of course they would not do anything so foolish as that.

The CHAIRMAN. What you think is, if the city of San Francisco builds a reservoir costing many millions of dollars, they would make use of it?

Mr. NEEDHAM. That is it. I have a telegram here from the attorney of the Modesto irrigation district, which reads as follows:

MODESTO, CAL., December 14, 1908.

Hon. J. C. NEEDHAM,

House of Representatives, Washington, D. C.:

Would like preamble resolution first paragraph recite grant to have been upon conditions. In case reservoir not constructed, patent to city should not be absolute, if possible. No serious objection, however.

L. L. DENNET.

The CHAIRMAN. Whatever resolution is passed by this committee will not contain any preamble.

Mr. NEEDHAM. I think that is a bad form of legislation.

Mr. CRAIG. Have plans for these works—reservoirs, dams, and so forth—been submitted to your department, Mr. Secretary?

Secretary GARFIELD. They have been submitted, but not approved. All those matters will be subject to further consideration. The plans that have been presented are of the engineering character, showing the probable method of construction, but they have not as yet been approved.

The CHAIRMAN. Mr. Hayes, would you like to be heard by the committee?

Mr. HAYES. I just want to make one suggestion, which perhaps is not necessary, but it seems to me that the suggestion of Mr. Englebright is quite unreasonable, that the city should be expected to spend a lot of money in a waterworks system without having a fee title of some kind. Every attorney knows the difference between an easement and fee-simple title. I do not think any city would be able to sell its bonds with any such title as an easement.

Mr. SMITH. Every railroad in the United States has been built on an easement, and they never have any difficulty in selling their bonds.

Mr. HAYES. The railroads that go by me own their land in fee simple, and every railroad company that I have ever had anything to do with always buys its land in fee simple.

The CHAIRMAN. Allow me to suggest, however, gentlemen, that that is a distinction without a difference. I suggest that the Government shall give back to these people all the lands they have, and then we should grant them the same kind of an easement that is granted under the right of way, which would be satisfactory. They would as absolutely control then as they would control under a fee, and it would require a considerable amount of legislative detail and administrative detail to accomplish what we accomplish by this very simple process by giving them the same kind of a title that they now have to a minor portion of the reservoir and the balance of it. Is that not a simpler way, and really it amounts to the same thing?

Mr. HAYES. My limited experience as an attorney leads me to conclude that an easement is a very different proposition from a fee-simple title, and as far as I am concerned, as a representative of the city of San Francisco, I should be very sorry to see this committee take any such stand as that. I want to remind the committee what has not, I think, very clearly appeared in this discussion, that the

Sierra Nevada Mountains and the State of California have been thoroughly examined for many years by representatives of the city of San Francisco, and no adequate available water supply has been found except this. And let me remind the committee also, that there are now in the neighborhood of 750,000 people around San Francisco Bay who it is proposed shall be benefited by this water supply, and that in the near future there will of necessity be a very much larger number.

Mr. SMITH. There are other water projects offered to the city of San Francisco.

Mr. HAYES. Yes; but not adequate. I know of some propositions, and they are neither adequate nor is it clear that they would be able to bring the water to the city.

Mr. KAHN. In the matter of an easement, I would like to remind the committee that the city of Salt Lake procured an easement for the construction of water pipes through the military reservation at Fort Douglas, bonds were issued by the city for the purpose of constructing its water supply, and it was impossible to sell its bonds because of this easement, and in the first session of this Congress the Congress gave the city of Salt Lake a fee to the land occupied by the pipe line.

The CHAIRMAN. That is entirely correct, Mr. Kahn, except that the permit that the city had to cross Fort Douglass reserve was not an easement but a permit. It was very similar in character to the permit under which these people are now operating and equally unsatisfactory.

Mr. KAHN. They could not sell their bonds under that permit.

Mr. CRAIG. Do you mean to say that you can not condemn an easement sufficiently to build whatever you want to build and pay for that easement, and that easement belong to the reservoir concern, or whoever proposes to do this pipe work? Of course it could do that. You need not condemn the whole fee to do it, but you can absolutely own the easement.

The CHAIRMAN. The chairman wants to submit, to go into the record, a letter from the American Civic Association, of four pages, signed by its president, J. Horace McFarland, in which he energetically protests against the committee doing anything that will deprive the public of the use of the upper reaches of the Tuolumne and that general region, and I put it in the record. I simply want to make the suggestion that that is a matter which this legislation does not directly affect, but it is a matter that has already been determined by the Secretary of the Interior, in the granting of the permit, that a permit having been granted to the city to build this reservoir, the question as to whether or no the city may use the valley for reservoir purposes is already determined, and therefore the matters referred to in the letter do not directly relate to the proposed legislation.

(The chairman submitted the following letter:)

AMERICAN CIVIC ASSOCIATION,
Harrisburg, Pa., December 15, 1908.

HON. FRANK W. MONDELL,
Chairman Committee on the Public Lands,
House of Representatives, Washington, D. C.

DEAR SIR: On behalf of the American Civic Association I wish to urge the most careful and intimate consideration of the problem before you in connection with a hearing on Wednesday of this week, to be given to officials of the city of San Francisco,

in advocacy of the bill to confirm a grant made by the Secretary of the Interior to that city for the use of Lake Eleanor and the Hetch Hetchy Valley of the Yosemite National Park.

While much evidence in favor of this grant has been brought before the Secretary of the Interior, I do not know that there has ever been any call for evidence as to the effect of the grant on the general interests of the American public as the owners of the Yosemite National Park.

I respectfully urge upon your committee the consideration of the fact that the United States has now all too few reservations of a public nature, supposedly to be held as public parks; that of these the Yosemite National Park is esteemed to be among the greatest; and that once passed from its possession it is practically impossible to regain these areas for public use. I would urge that our increased population makes more necessary advance provision, in the wisdom of the Federal Government, of broad areas for recreation and the regaining of health through access to the wonders of nature. I would also urge that the Yosemite National Park is unique and that no portion of it can be spared to any use unless that use benefits the whole public.

The statement has been made that the creation of a lake in the Hetch Hetchy Valley to promote the interests of the city of San Francisco by impounding therein a great volume of water would add to the scenic beauty of the valley; but it is also known that the flooding of this valley would make such beauty, if so created, inaccessible. Moreover, I would respectfully insist that any claims made by any parties whatever to the effect that a public reservoir, to impound waters for domestic uses, should be allowed to be open to indiscriminate travel, is based on complete ignorance of modern methods of proper safeguarding of the water supply. If this valley is given up to San Francisco it must be utterly given up, and any suggestions as to its accessibility to tourists should be taken into consideration with the fact that such accessibility would introduce the danger of contamination, and make a remedy for San Francisco's supposed loss in the matter of a water supply worse than the difficulty which has caused those ills.

Moreover, if this valley is given up for this purpose, whether or not it is so stated, inevitably in the future all the tributary watershed supplying the water impounded must be given up to the purpose of the water supply of the city of San Francisco, and therefore must be removed completely from public use. Any other treatment would be suicidal and wrong, and I beg of you not to be deceived by any statements which may be made by those either unfamiliar with the circumstances or who do not realize the necessities of a modern city water supply, to the purport that the creation of the proposed reservoir will do other than withdraw this great portion of the public domain from the public use to which it was once dedicated by Congress.

If it should be found that San Francisco can not have a water supply anywhere else than in the Hetch Hetchy Valley which will properly serve her purposes, and if, in the belief of your committee and Congress, it is more important for San Francisco to have the Hetch Hetchy Valley than for the whole country to have the Hetch Hetchy Valley, then the grant should be confirmed, but under no specious suggestion of a possible increase in picturesqueness or of any possible dual use of the location for both reservoir and the purpose to which it was once set aside by Congress.

For the above reasons I now again urge the fullest and most careful consideration of the matter, with an invitation to others than the citizens of San Francisco to participate in the hearing, so that the truth may be fully brought out. I would suggest that various associations concerned with the protection of American scenery be invited to attend a hearing arranged for the purpose, and among these I would name the Appalachian Mountain Club, of Boston; the American Civic Association, of Philadelphia; the Sierra Club, of San Francisco. I would suggest further that citizens who have knowledge of the conditions be likewise invited, and among these I would name Richard Underwood Johnson, the associate editor of the Century Magazine; John Muir, the eminent naturalist; and others whose great achievements and high reputation place their motives above criticism.

With the hope that the Committee on Public Lands will not deem it wise to favorably report the approval of the grant until after full public opportunity has been offered to present all the facts, apparently not now completely made known, I am,

Very respectfully yours,

J. HORACE MCFARLAND,
President.

Mr. GRONNA. As I understand it, the Secretary has no objection to the suggestion offered by the gentleman from California, Mr. Needham?

Secretary GARFIELD. It should be perfectly clear that this does not increase the purpose of the grant, that it should be definitely provided for.

The CHAIRMAN. The Chairman wants to make this suggestion, in view of the importance of this matter and the fact that a number of suggestions have been made relative to the form of the legislation, that it might be well for the committee, if in their wisdom they deem it wise and proper, to have a subcommittee appointed to prepare and report to the committee legislation on the subject, either the resolution as it stands, or with amendment, or some different form.

STATEMENT OF DR. A. H. GIANNINI.

Doctor GIANNINI. I simply want to make one statement, and that is in answer to a remark of Mr. Englebright, of California, because I would like to have the representatives of California behind this proposition. He speaks of the removal of the taxable property from his county. I would like to suggest to him that the construction of these works will probably mean the expenditure of millions of dollars in his neighborhood, and I think his county will be amply repaid for whatever loss it might suffer by this construction. There will be roads leading from this place, and all kinds of construction work going on, and I think the money expended in that county will more than repay for the slight loss, and I would like to urge on the members of this committee this one point, that this is a proposition that the city of San Francisco is intensely interested in. We are now rehabilitating and reconstructing the city, and as the honorable Secretary of the Interior has stated, the present water supply of San Francisco is inadequate and unsatisfactory, and this will help us to rehabilitate our city.

Mr. CRAIG. There is one question I want to ask. It has been stated that this is the only place where water can be obtained to supply this city. There are other cities in this neighborhood, probably, that might be interested in this matter. Have any of them been heard from?

Mr. HAYES. They all have the right to come in and share.

• Mr. CRAIG. Is that guarded?

Mr. KAHN. Yes; it is all in the permit.

(Thereupon, at 11.45 o'clock a. m., the committee adjourned until to-morrow, Thursday, December 17, 1908, at 10.30 o'clock a. m)

The following communications were received by the chairman too late to be placed before the committee, and are therefore included in the printed record of the hearings:

EDITORIAL DEPARTMENT, THE CENTURY MAGAZINE,
New York, December 14, 1908.

HON. FRANK W. MONDELL, M. C.,
Chairman Public Lands Committee, Washington, D. C.

DEAR SIR: As I learn that on Wednesday a hearing is to be given to representatives of San Francisco on the bill to confirm the Garfield grant, I write to say that I am preparing an argument against the bill, which I hope to be able to forward to you to-morrow and which I hope may be taken into consideration in connection with the hearing. I am confined to my house with a heavy cold and it is not possible for me to appear in person, as I should greatly like to do. Meanwhile I send to you for the use of the committee in connection with my statement the following:

(a) Twenty photographs of scenes in the Hetch Hetchy Valley—titles on separate list. (b) An editorial from *The Century Magazine* for August, 1908, entitled, "A high price to pay for water." (c) An illustrated article by John Muir, the California naturalist and discoverer of the Muir glacier, entitled "The endangered valley," from advance sheets of *The Century* for January, 1909. (d) and (e) Letters from John Muir and William E. Colby.

I respectfully submit these to be filed with the archives of the committee, and I request that the editorial be included in the publication of the hearings, as it has elicited the approval of both sides of the controversy for its fairness in stating the issue. I hope the two letters may also go into the record.

Very truly, yours,

ROBERT UNDERWOOD JOHNSON

A HIGH PRICE TO PAY FOR WATER—APROPOS OF THE GRANT OF THE HETCH HETCHY VALLEY TO SAN FRANCISCO FOR A RESERVOIR.

Too little was said at the White House conference of the conservation of one of our chief resources, our great natural scenery, though Mr. Horace McFarland made an impassioned appeal for its protection as a national asset. This is in no sense a local question. The Palisades and Highlands of the Hudson, the White Mountains, the Adirondacks, Niagara, the Yellowstone Park, the Arizona Canyon (to name but the chief of such treasures), belong to the whole country, and their invasion by special interests or their diversion to commercial uses should be a matter of the most vigilant scrutiny.

The Secretary of the Interior, for reasons which doubtless appear to him good and sufficient, and with the approval of the President, has made over to the city of San Francisco, on certain conditions, as a reservoir for its water supply the wonderful Hetch Hetchy Valley, one of the most beautiful gorges of the Sierras, which, as part of the Yosemite National Park, was set aside in 1890, by reason of its scenery, for the recreation and use of all the people. This action has, on the face of it, the authority of a congressional provision (of February 15, 1901) by which the Secretary of the Interior may grant water privileges in the three national parks of California, "if not incompatible with the public interest." Whether the United States Supreme Court would hold that such authority extends to the destruction to so large an extent of the original purpose of the reserve may yet be the subject of adjudication.

In a matter relating to public lands the presumption is in favor of any course taken by President Roosevelt, Secretary Garfield, and Forester Pinchot. As our readers know, we have vigorously supported their enlightened services to the cause of forest conservation, as we have the services of preceding administrations. It was in this magazine that the movement for the creation of the Yosemite National Park first took public form in 1890, and the chief reason urged upon the Public Lands Committee for making the reservation—and we know whereof we speak—was to rescue from private invasion and for public use the rare beauty of the Hetch Hetchy and of the Canyon of the Tuolumne River, which flows through it. We therefore have particular regret that we do not find satisfactory the reasons officially given for the administration's extraordinary step, which, logically, would place the great natural scenery of the country at the service of any neighboring city which should consider its appropriation necessary or even desirable.

Let us say at once that we hold human life more sacred than scenery, than even great natural wonderlands, vastly as they contribute to save life and promote happiness; and if that were the issue, if San Francisco could not otherwise obtain an abundant water supply, we should be willing to dedicate to that purpose not only Hetch Hetchy, but even the incomparable Yosemite itself. But this is not the contention of Secretary Garfield in the official document granting the request. The administration's position is not that the step is a last resort, that no other source is adequate, but that Hetch-Hetchy affords the most abundant and cheapest available supply of pure water. Even this is stoutly denied by the opponents of the scheme, who contend, moreover, that a dozen other adequate systems may be found. Eminent and disinterested engineers have declared the present supply excellent and capable of ample development, as the water companies claim, and since the city fixes the water rates, and at need may condemn and acquire these sources at reasonable cost, there would seem to be no dangerous "monopoly." Indeed, the permission to dam the beautiful valley into a lake is conditional upon the previous exhaustion by the city of the resources of Lake Eleanor, which is also in the national park. Other conditions are attached and compensations agreed upon which are believed by the secretary to be safeguards of the public interests, with the important omission, however, to provide safeguards against the destruction of

the scenery; but the fact remains that of this great reservation, which is as large as the State of Rhode Island, the northern third—for the watershed of the valley even above the Tuolumne Meadows must go with the valley itself—is to be withdrawn from the use of the people of the whole United States and given to the city of San Francisco. This involves a new principle and a dangerous precedent, and is a tremendous price for the nation to pay for San Francisco's water, and the burden of proof that it is necessary is upon those who advocated the grant. It is not enough that it should be thought merely desirable.

It is idle to attempt to discredit such defenders of the public's previous rights in the valley as John Muir and many other members of the Sierra Club and other like organizations by calling them "sentimentalists" and "poets." Cant of this sort on the part of people who have not developed beyond the pseudo-"practical" stage is one of the retarding influences of American civilization and brings us back to the materialistic declaration that "Good is only good to eat." Most of those who oppose the grant live in San Francisco and vicinity and are deeply interested in the future of that redoubtable city; but they know the growing vogue of the few camping grounds of the health-giving park, into which, in the torrid and dusty summer, the people of the lowlands swarm in "the pursuit of happiness;" they know the exceptional beauty of the Hetch Hetchy, only surpassed in the Sierras by the neighboring Yosemite and by the distant and not easily accessible Kings River Canyon; they know also—to meet on its own ground the argument of cheapness—the money value of California's great natural attractions and that once to destroy the beautiful valley floor by flooding will be to render it irrecoverable.

There is one ground of hope that the danger may be averted. By the time it can be demonstrated that Lake Eleanor is not adequate, it is likely to be generally recognized that a pure-water supply need not depend upon mountain resources, but may be obtained by filtration from streams of less pure quality. Meantime the citizens of San Francisco, who (alone of Californians) are to vote upon the question, will do well to exhaust every other possibility of meeting their needs before giving their consent to the ruin of one of their imperial State's greatest natural treasures. We are confident that this issue would be the one most approved by the officials at Washington, who from conscientious motives have given assent to local official demands.

[Memorandum from John Muir, president the Sierra Club, received May 14, 1908, by J. Horace McFarland, president American Civic Association.]

HETCH HETCHY DAMMING SCHEME.

The better part of the world is beginning to know that beauty plays an important part in human progress, and that regarded even from the lowest financial standpoint it is one of the most precious and productive assets any country can possess.

Most of our forests have already vanished in lumber and smoke, mostly smoke. Fortunately the Federal Government is now faithfully protecting and developing nearly all that is left of our forest and stream resources; nor even in these money-mad commercial days have our beauty resources been altogether forgotten. Witness the magnificent wild parks of the West, set apart and guarded for the highest good of all, and the thousands of city parks made to satisfy the natural taste and hunger for landscape beauty that God in some measure has put into every human being.

Timber and water are universal wants, and of course the Government is aware that no scheme of management of the public domain failing to provide for them can possibly be maintained. But, however abundantly supplied from legitimate sources, every national park is besieged by thieves and robbers and beggars with all sorts of plans and pleas for possession of some coveted treasure of water, timber, pasture, rights of way, etc. Nothing dollarable is safe, however guarded. Thus the Yosemite Park, the beauty glory of California and the nation, nature's own mountain wonderland, has been attacked by spoilers ever since it was established, and this strife I suppose must go on as part of the eternal battle between right and wrong. At present the San Francisco board of supervisors and certain monopolizing capitalists are trying to get the Government's permission to dam and destroy Hetch Hetchy, the Tuolumne, Yosemite Valley, for a reservoir, simply that comparatively private gain may be made out of universal public loss.

Should this wonderful valley be submerged as proposed, not only would it be made utterly inaccessible, but the sublime Tuolumne Canyon way to the heart of the high Sierra would be hopelessly closed. None, as far as I have learned, of the thousands who have visited the park, is in favor of this destructive and wholly unnecessary water scheme. Very few of the statements made by the applicants are even partly true.

Thus, Hetch Hetchy, they say, is "a low-lying meadow." On the contrary, it is a high-lying natural landscape garden. "It is a common minor feature, like thousands of others." On the contrary, it is a very uncommon feature, and after Yosemite, the rarest, most beautiful, and in many ways the most important feature of the park. "Damming it would enhance its beauty." As well say damming New York's Central Park would enhance its beauty. "Hetch Hetchy water is the purest and the only available source of supply for San Francisco." It is not the purest, because it drains a pleasure ground visited by hundreds of campers with their animals every season, and soon these hundreds will be thousands. And there are many other adequate and available sources of supply, though probably they would be somewhat more costly; and so with all their bad, cunning arguments, boldly advanced under the general ignorance of the subject.

JOHN MUIR.

SIERRA CLUB, MILLS BUILDING,
San Francisco, May 12, 1908.

NORMAN J. HAPGOOD, Esq.,
Editor of Collier's Weekly, New York City.

DEAR SIR: Having read Mr. Pinchot's argument in favor of the granting of the wonderful Hetch Hetchy Valley, situated in the Yosemite National Park, to be used as a reservoir site for a municipal water supply for San Francisco, I venture to reply.

The subject naturally divides itself into two parts: First, the necessity for using Hetch Hetchy, and, secondly, the effect on the natural scenery and travel in the park resulting from such use.

Necessity.—Mr. Pinchot admits that there are other available sources of supply for San Francisco, which have been acquired by water companies, and his main excuse for rejecting these sources is that these companies "seem to have been unreasonable in demanding far too high a profit." He fails to recognize the fact that any or all of these sources are open to condemnation by the city, which can thus compel the owners to turn them over at a reasonable figure. Condemnation will have to be resorted to even in case of the Lake Eleanor and Hetch Hetchy system in order to extinguish many private rights.

As a matter of fact, San Francisco is exceptionally situated as far as the acquisition of a municipal supply is concerned. She probably has more available sources of supply than any other city of her size in the United States. Colonel Mendell, a most eminent hydraulic engineer, reports on fourteen available systems. It is self-evident that this is the case, for this city is situated near the confluence of the great Sacramento and San Joaquin rivers, with many of their largest branches heading in the Sierra just to the east. Immediately to the south, on the same peninsula, and to the north across the Golden Gate, numberless smaller streams waste their waters in the ocean. Providence has been more than prodigal in bringing water within reach of San Francisco. Mr. Pinchot states that the present water supply of the city is "inadequate and unsatisfactory." By referring to Equity Case No. 13395, in the United States circuit court for the northern district of California, we find that Mr. Grunsky testified that "The wholesomeness of the water delivered (to San Francisco) has been established by long-continued use." In the same case the testimony shows that over 100,000,000 gallons daily, or three times the present need of the city, can readily be developed by extension of the present supply system. Colonel Heuer, a government engineer, reports to the same effect. Mr. Grunsky is a very eminent engineer, but I am not informed that he has ever constructed a great municipal water-supply system. In the case referred to such eminent specialists as Hering, of New York and Philadelphia; Stearns, of Boston, and others, testified that the present system was one of the best water supplies of any large city in the United States, both as regards quality and quantity, capable of development, and that there was no necessity of resorting to the Tuolumne (Hetch Hetchy system).

Prof. C. D. Marx, a specialist of Stanford University, in a carefully prepared paper on the subject, reports as follows:

"It can readily be shown that the drainage area needed for a water supply capable of furnishing 200,000,000 gallons per day can be had on a number of the Sierra streams. * * * That the drainage areas of streams north of the Tuolumne give better promise of meeting these requirements can not be denied. * * * It can not be said that the physical data now available are such as to admit of a reliable comparison of the relative values of the various sources of water supply for San Francisco from the Sierras."

The fact of the matter is that there has been friction between the Spring Valley Water Company, supplying San Francisco, and the city officials for many years. This

attempt to secure rights in the Yosemite National Park has been an outgrowth of this hostility with the idea of displacing the local company, and in consequence the city is applying for a free water right, which has only been kept out of private hands because John Muir and other public-spirited citizens brought about the establishment of the Yosemite National Park in 1891, in order that its remarkable scenic features might be preserved for the entire nation.

There is no question but that the Hetch Hetchy supply is a splendid one, but it is equally beyond question that there are many others available. Mr. Pinchot says that "the Tuolumne supply offered the best and most available supply for the city." Some of the most eminent hydraulic engineers in America differ with him on this point even, but Mr. Pinchot's own statements establish that there is no compelling necessity for using the Hetch Hetchy system—it is merely a choice of many.

Effect.—Mr. Pinchot is convinced that the damming of the Yosemite-like floor of Hetch Hetchy will be less destructive to the scenic beauty of the national park than has been feared. His contention is that it will be converted into a "beautiful lake." He compares it to Crater Lake and Tahoe. It must be remembered that it is a reservoir which is to be created, and not merely a lake; that it is to be drawn from to an increasing extent as the years go by; that the warm summer climate and low elevation of the floor of this Yosemite Valley, with its vegetable mold only covered with a comparatively slight depth of water, are going to produce a tremendous aquatic growth, and as the waters recede unsightly margins of slime and decay will be exposed, with the accompanying disagreeable odors. Mr. Pinchot says that the lake will be bordered by "vertical granite walls," and yet that "it would be a simple matter to make trails or roads around the edges of the valley above high-water mark." The statements are not consistent from an engineering standpoint. Who is going to stand the burden of the great expense of their construction? The Government appropriates only a paltry sum for the use of the entire national park, and the needs of Yosemite Valley, as far as roads and trails are concerned, are shamefully apparent. Is the National Government, after giving a local community free of charge something that belongs to the entire nation, going to spend hundreds of thousands in addition to make accessible the reservoir lake in Hetch Hetchy? Mr. Pinchot shows his bias by calling the floor of Hetch Hetchy a "cattle ranch." I have been in the valley on six different occasions and never saw any cattle on its beautiful park-like floor. This is the experience of many of my friends. It may be used occasionally for the pasturing of cattle. In any event, there is ten times more stock pastured on the floor of Yosemite Valley every year than in Hetch Hetchy. If Mr. Pinchot's contention is a valid one, he would turn the great Yosemite into a reservoir. He overlooks the fact that a "cattle ranch" is a condition that may be wiped out in a day, if the Government elects, but all the power and wealth of the American nation can not restore the pristine beauty of the parklike floor of the Hetch Hetchy Valley if it is once flooded. Mighty oaks and towering pines can not be replaced in a day. Mr. Pinchot says that the waterfalls will not be interfered with, but his informants have failed to tell him that the wonderful Tuolumne Fall, at the upper end of the valley, whose majestic roar can be heard throughout a great portion of the valley as the entire river leaps into the emerald pool below, will be entirely "drowned out."

Mr. Pinchot misses the main objection to the use of Hetch Hetchy as a reservoir. Thousands of campers of moderate means from the hot, dusty plains of the San Joaquin now inhabit the floor of the Yosemite during the summer months. The congestion is great. A road into the Hetch Hetchy would relieve it and thousands more of the increasing population of these plains would camp on the floor of the Hetch Hetchy. They will in time if the Government does not make it impossible by flooding the only available camping place for miles around. The national park was created for these people and these purposes. A limited number of wealthy tourists may gain access to this lake surrounded by towering and almost inaccessible cliffs, but they will only be able to view its sublimity from excursion boats, and can not live on the floor of the valley for days and wander about at will, as one can now.

Mr. Pinchot misses another salient point. If these thousands of tourists frequent this reservoir valley, as he claims they can, what is going to become of the typhoid germs and pollution created by this travel? What is going to become of the drainage of the river flowing through the valley, and which heads in the national park in a region that in a few decades is going to be frequented by thousands upon thousands of travelers? As a matter of fact, the use of Hetch Hetchy Valley for a municipal water supply is absolutely inconsistent with its rightful use as a national park.

The greatest judges of scenery in the world who have both visited this valley many times—John Muir, the author, and William Keith the artist—both say that in many respects it rivals the Yosemite and they are both most positive that its use as a reservoir will have a most destructive effect on its scenic beauty.

We agree with Mr. Pinchot that "most trees must be cut and most waters must be used," but we do not follow him when he contends for the granting of a destructive right years in advance of any necessity, even on his own statement. He overlooks entirely the economic value of scenery, and the fact that millions frequent the Alps each year for recreation alone. The Hetch Hetchy Valley is of infinitely greater economic importance to the nation and the State of California, with its park-like floor, intact and available for campers, than it will be as a reservoir site. This nation can afford to pay millions to prevent this desecration as far as economy and dollars and cents are concerned.

I am a tremendous admirer of Mr. Pinchot and have aided him in his noble work in my small way. My life and my business interests are interwoven with those of San Francisco, and no one has her welfare more at heart than I, and yet I know that this precedent of entering national parks is wrong in principle and unnecessary in fact, and I regret more than I can express in words to learn that in this instance Mr. Pinchot has become an advocate of comparatively local interests, as opposed to the interests of this great nation.

Very truly,

WM. E. COLBY.

NEW YORK,

At home, December 15, 1908.

HON. F. W. MONDELL, M. C.,

Washington, D. C.

DEAR SIR: I am sending you herewith the brief concerning which I wrote to you last evening, and I respectfully request that it may be presented at to-morrow's meeting of the committee, so that it may have the same publicity that will be obtained by the advocates of the scheme. I trust that it may be read to the committee, as well as the letters of John Muir and W. E. Colby, which, if they can not otherwise go into the record and to the public, I desire to submit in confirmation of my statements.

I am still ill, but I hope to get down to Washington on Thursday or Friday and to call upon you briefly.

I shall appreciate greatly your kindness in this matter.

Very sincerely, yours,

R. U. JOHNSON.

P. S.—I add some copies of Muir's Century article for the use of the committee.

BRIEF OF ROBERT UNDERWOOD JOHNSON.

COMMITTEE ON THE PUBLIC LANDS, *House of Representatives.*

GENTLEMEN: As a citizen of the United States I wish to record my opposition to the pending bill confirming the grant of the Hetch Hetchy Valley and other portions of the Yosemite National Park to the city of San Francisco, executed May 11, 1908.

Exception to this grant is to be taken upon two grounds:

(1) That in making the grant the Secretary of the Interior, even if it be considered that he has acted within the authority conferred upon him in the matter of water rights in the Yosemite National Park by the act of February 15, 1901, has failed to give due weight to the public interest for which the national park was created; and,

(2) That the grant, considered on its own merits, ought not to be confirmed, because

(a) The Hetch Hetchy is not necessary to the city of San Francisco as a source of water supply; and (b) the grant is incompatible with the public interest as related to the national park; and (c) the precedent involved is one which might be invoked to the impairment or destruction of a large part of what has been gained for the public in the creation of our great national parks.

Let me say at the outset that, as I have elsewhere testified, I regard the service of the President in the matter of the conservation of the national forests and other resources as the most distinguished achievement of his incumbency and as of colossal importance and value to our country. It is only in this grant of national territory for the uses of a city that I find anything to criticize in the record of the administration in this field.

First, on the question of jurisdiction: On Saturday, December 12, 1908, Chief Justice James T. Mitchell, of the State of Pennsylvania, addressing the Pennsylvania Society in New York said:

"* * * the only safety for all is obedience to law as it is written, not to a strained and distorted construction for temporary view to make it mean what it does not and

was never intended to mean, but honestly and fearlessly to carry out the real meaning of its makers."

I respectfully submit that the action of the administration in making this grant is based in a strained and technical construction of the authority of the Secretary of the Interior conferred by the act of Congress of February 15, 1901, authorizing the Secretary to exercise jurisdiction in the matter of water privileges within certain territory including the Yosemite National Park. I believe that the Congress regarded the water privileges mentioned in that act to bear a minor, casual, and incidental relation to the park, and that it is a violent construction of the language of the act to assume that it would authorize the virtual diversion of one-half of this great reservation from public use and recreation, greatly to the detriment of the public enjoyment of the magnificent scenery. The Hetch Hetchy Valley, of which I have the pleasure to submit herewith a series of 20 photographs, is only a less wonderful Yosemite, and if the Secretary is empowered by the act to divert and withdraw from public use the former (with, of course, the watersheds above it) he has also the power to do the same with the Yosemite itself, and, on a similar demand, with any portion of any public property named in the act. That the Congress did not intend to give the Secretary unlimited power is clearly indicated by the insertion of the phrase "if not incompatible with the public interest," meaning of course the public interest already provided for in the creation of the park, namely, the preservation of the great scenery and the use of the territory for the recreation of the people.

Suppose that the act of 1901 had explicitly conferred upon the Secretary entire control of the question of fences, would he be considered as acting within his authority if he had permitted fences to be built which would exclude the public from approach to this beautiful valley? And yet, virtually, that is what will be accomplished when we follow the rights thus conveyed by the Secretary to their logical results. For you can not grant a river or a valley for a reservoir without excluding the public from use of the watersheds which feed it. Confirm the grant and you have diverted from public use one-half the great Yosemite National Park, which is now as large as the State of Rhode Island! Let there be no illusion; the grant will withdraw this proportion of the park from the use and recreation of the public.

Many instances must occur to inexperienced legislators of attempts to control large public properties by laying a foundation for a technical construction of passages of subordinate and minor intent—in fact, a great part of the duty of the legislator of to-day is to scrutinize provisions wherein "more is meant than meets the ear." I do not know whether the act of 1901 was advocated with the expectation that it might be appealed to as a means of securing the Hetch Hetchy as a water supply for San Francisco or whether that appeal is an afterthought following upon the disaster of 1906, which aroused the sympathies of the civilized world. Whatever may be the fact in this regard, I believe that the Congress of 1901 had no idea that the bestowal of authority to deal with water privileges for which it was legislating would ever endanger the integrity of the great National Park, against the creation of which by act of October 1, 1890, I believe not a vote was recorded. The purpose of that legislation, which was originated, forwarded, and personally proposed to the Public Lands Committee by myself in close consultation with John Muir, the act itself being drawn later by Charles D. Poston, was to save the forests from destruction, to give access to the wonderful cataract of the Tuolumne River, to protect the scenery of the great Yosemite waterfalls, and to keep the region for the use and recreation of the people, and the committee recommended it for those reasons. It remains for you, gentlemen, to determine whether this honorable and patriotic purpose shall be thwarted by means of a technical construction of law, and for a purpose which may be better attained without this sacrifice. Can it for a moment be assumed that any authority which the Congress might see fit to delegate to a Niagara Falls commission in the matter of the distribution of power could be construed to authorize the diversion of the Niagara River so as virtually to destroy the scenic beauty of the cataract? The mind revolts at such a calamity, yet no less violence would be done to the sense of proportion or to the ordinary methods of interpretation in the case of the Hetch Hetchy.

In general, is there not a great danger to our institutions in giving sanction by confirmatory acts to such interpretations, made under no stress of emergency, as when an official is called upon to act suddenly for some overwhelming public good? This grant was made while the Congress was still in session, and in the face of strong opposition. Were it not better that executive officials should be held to a stricter observance of the spirit as well as of the letter of the law? To act within the technical letter of the law is a safeguard, but to consider the letter as authorizing action not in the spirit of the law is leaving too much to private interpretation.

(a) Leaving the question of the authority of an executive officer, which need only be stated to excite the interest of every member of the legislative branch of the Gov-

ernment, and considering the grant on its merits, let me record my belief—which is also that of many distinguished and prominent citizens of San Francisco—that the lands and waters granted to the city are not necessary to provide an abundant supply of pure water. Nor, as stated above, does the Secretary so claim, though the ceding of public property for such a purpose could only be justified on that ground. It is not necessity but convenience that is invoked. It is not only not demonstrated, it is not even claimed, by the Secretary that the Hetch Hetchy region is the only available source, or even the best, but simply that it is “a desirable and available” source. But the opponents claim—and they have the authority of engineers—that there are several other available sources of equal capacity and quality. Moreover, it is claimed by the Spring Valley Water Company, which is now the chief purveyor of water to the city, that it has power to furnish to the city all the supply needed within the next fifty years, and that it can develop enough to more than meet later demands. The claim that San Francisco must needs have the help of the Government to relieve it of the incubus of a monopoly falls to the ground when it is remembered that the water rates are not fixed by the company, but by the courts. The question seems to be whether the company will sell its rights to the city at a price satisfactory to the promoters of the Hetch Hetchy scheme, and there can be no doubt that the preliminary success of this scheme is being used as an argument by some newspapers to induce the company to come to terms and that many of the opponents of the scheme think it was instituted for that purpose. The public, outside of California, has no special interest in the negotiations except as the integrity of the national park is involved.

The charge is made by responsible persons that an additional motive for desiring the grant is the hope that ultimately the surplus water may be available for electrical power for the city. The terms of the grant now explicitly deny this advantage, but it is more than an open secret—it is a subject of public discussion in San Francisco—that once the Congress is committed to the scheme by the confirmation of the grant, it will be petitioned to remove the safeguards which the Secretary has thrown about everything but the forests. It will be asked to grant the use of surplus water for electrical power to the city; it will be asked to remove the order of precedence in use, so that Hetch Hetchy may be taken before Lake Eleanor, etc.

(B) I believe that the grant is “incompatible with the public interest” as related to the national park. I have already cited the ominous fact that the whole northern half of the park must be given over to the jurisdiction of the city—an imperium in imperio—and that the city may exclude tourists, campers, and visitors with animals, in short, the public generally, from the magnificent scenery. The beautiful Tuolumne meadows running up to the base of the glacier summits of the Sierra—a most attractive camping ground and center of excursions—must be for the public as though they did not exist. The water-wheel cascades of the Tuolumne above the valley—one of the half-dozen great waterfalls of the world—may no longer be freely visited. The charming Tuolumne Fall at the head of the Hetch Hetchy will simply be extinguished by the creation of a valley reservoir. Last of all, the valley itself is to be wiped out of existence, and a tame expanse of water, the work of man, substituted for the exquisite and wonderful handiwork of God. The coolness with which these gentlemen endeavor to forestall the feeling of revolt against this desecration by saying that they propose to improve upon this exquisite creation of delight and repose is little short of blasphemy. They do not care—even if they reflect upon it—that the sublimity of such great scenery is made evident and is accelerated by the contrast between rugged peaks and cliffs on one hand and the gentle levels of mingled meadow, grove, and stream, of the sort that Wordsworth found—

Appareled in celestial light
The glory and the freshness of a dream.

This is in keeping with the vandalism of certain commissioners in the old days of the mismanagement of the Yosemite Valley who wished to cut out all the underbrush so that the guests at the Coleman House might know when the stage was coming, not knowing, benighted souls! that the underbrush was the unit of measurement even of Sentinel Rock, nearly 3,000 feet high, leading the mind by successive steps, from tree to taller and still taller trees, to a realization of the vast heights of that sublime mass. Let there be no illusion about the fate of Hetch Hetchy; it can not be submerged and retained; it can not be submerged and restored. The forests not only of the valley but of the neighboring region will be destroyed in the course of the construction of the proposed dam. Even the lake can not be seen from the precipitous walls of the canyon, and if it could it would be a thing of unsightly borders and artificial aspect. Satan himself would never have dared play such tricks with the Garden of Eden.

I protest in the name of all lovers of beauty—and in this case of rare, of phenomenal beauty—against the materialistic idea that there must be something wrong about a

man who finds one of the highest uses of nature in the fact that it is made to be looked at. Such so-called practical men would have their days full correcting the mistakes of the Almighty in this respect. I call your attention to the fact that the great public—those who visit the park, and those who may visit it—have now nobody to look to but the Congress in defense of their rights in a wonderful reservation set apart for the use of all the people—indeed, of the whole world. The current trend of public opinion is unmistakably and overwhelmingly in favor of conserving what we have of natural beauty. The municipal government can destroy in six months the wondrous attraction which it has taken nature unnumbered centuries to produce. Were its destruction necessary to save life there would be a reason for it, but audacity itself would not go so far as to make such a claim. Let San Francisco go elsewhere for water—to regions where it can be had in abundance and of pure quality without the destruction of one of God's masterpieces.

(c) I beg this honorable committee also to pause and reflect how far-reaching and perilous is the precedent set by this action of Secretary Garfield. It places the great treasures of scenery, the care of which should be a trust for the civilized world, at the mercy of any similar demand. The whole country is aroused to our wastefulness and neglect of such treasures, and the whole country, when it comes to understand the meaning of this bill, will be shocked at the proposition to throw to the wolves so fair an offspring of Creation as the Hetch Hetchy. As one who has spent twenty years of unremitting work on the conservative side of the forest problem, I beg this committee not to throw its influence on the destructive side. In his message of the current month the President has set up the right standard both for his own action and that of the country in saying of the Yellowstone Park: "This, like the Yosemite, is a great wonderland, and should be kept as a national playground. In both all wild things should be protected and the scenery kept wholly unmarred."

All of which is respectfully submitted.

ROBERT UNDERWOOD JOHNSTON.

THE ENDANGERED VALLEY—THE HETCH HETCHY VALLEY IN THE YOSEMITE NATIONAL PARK.

[By John Muir, author of "The Mountains of California," "Our National Parks," etc.]

(In *The Century* for August, 1908, in an editorial article entitled "A high price to pay for water," attention was called to the grant last May by the present administration to the city of San Francisco of extensive portions of the great Yosemite National Park for use as a water supply. The agreement between the city authorities and the Government provided, among other conditions, that the voters of San Francisco should accept the grant by a two-thirds vote; that before the valley is utilized the resources of Lake Eleanor, to the north of it and also within the park, shall first have been used and found insufficient, and that the city shall acquire all private titles within the allotted territory, which it is now engaged in doing. The acceptance of the grant was opposed on the ground that other sufficient sources are available and because of the great expense of construction. The vote of the city was taken November 12, and resulted in a majority of 6 to 1 in favor of accepting the grant. We can not but feel that an unfortunate precedent has been established in the diversion of a large part of the park—with the watersheds, nearly half of it—from the use of the whole public to the service of a city. It is almost as though the grant of a water-power privilege at Niagara should shut out the public from the enjoyment of the wonderful cataract.

The few photographs here shown and Mr. Muir's brief description will serve to suggest to the reader the great beauty of the valley.—THE EDITOR.)

The fame of the Merced Yosemite has spread far and wide, while Hetch Hetchy, the Tuolumne Yosemite, has until recently remained comparatively unknown, notwithstanding it is a wonderfully exact counterpart of the famous valley. As the Merced flows in tranquil beauty through Yosemite, so does the Tuolumne through Hetch Hetchy. The floor of Yosemite is about 4,000 feet above the sea, and that of Hetch Hetchy about 3,700, while in both the walls are of gray granite, very high, and rise precipitously out of flowery gardens and groves. Furthermore the two wonderful valleys occupy the same relative positions on the flank of the Sierra, were formed by the same forces in the same kind of granite, and have similar waterfalls, sculpture, and vegetation. Hetch Hetchy lies in a northwesterly direction from Yosemite at a distance of about 18 miles, and is now easily accessible by a trail and wagon road from the Big Oak Flat road at Sequoia.

The most strikingly picturesque rock in the valley is a majestic pyramid over 2,000 feet in height, which is called by the Indians "Kolana." It is the outermost of a

group like the Cathedral Rocks of Yosemite and occupies the same relative position on the south wall. Facing Kolana on the north side of the valley there is a massive sheer rock like the Yosemite El Capitan, about 1,900 feet high, and over its brow flows a stream that makes the most beautiful fall I have ever seen. The Indian name for it is Tueeulala. From the brow of the cliff it is free in the air for a thousand feet, then strikes on an earthquake talus and is broken up into a ragged network of cascades. It is in full bloom in June and usually vanishes toward the end of summer. The Yosemite Bridal Veil is the only fall I know with which it may fairly be compared, but it excels even that wonderful fall in airy swaying grace of motion and soothing repose. Looking across the valley in the spring, when the snow is melting fast, Tueeulala is seen in all her glory burning in white sun fire in every fiber. Approaching the brink of the rock her waters flow swiftly, and in their first arching leap into the air a little hurried eagerness appears; but this eagerness is speedily hushed in sublime repose, and their tranquil progress to the base of the cliff is like that of downy feathers in a still room. The various fabrics into which her waters are woven are brought to view with marvelous distinctness by the instreaming sunshine. They sift and float from form to form down the face of that grand gray Capitan rock in so leisurely and unconfused a manner that one may examine their texture and patterns as one would a piece of embroidery held in the hand. Near the bottom the width of the fall is increased from about 25 feet to 100 feet and is composed of yet finer tissue, fold over fold—air, water, and sunbeams woven into irised robes that spirits might wear.

A little to the eastward, on the same side of the valley, thunders the great Wapama or Hetch Hetchy Fall. It is about 1,700 feet high, and is so near Tueeulala that both are in full view from the same point. Its location is similar to that of the Yosemite Fall, but its volume of water is much greater, and at times of high water may be heard at a distance of 5 or 6 miles or more. These twin falls are on branches of the same stream, but they could hardly be more unlike. Tueeulala, in sunshine, chanting soft and low like a summer breeze in the pines; Wapama, in gorge shadows, roaring and booming like an avalanche. Tueeulala whispers that the Almighty dwells in peace; Wapama is the thunder of His chariot wheels in power.

There are no other large falls in the valley. Here and there small streams, seldom noticed, come dancing down from crag to crag with bird-like song, doing what they can in the grand general harmony. The river falls about 20 feet into a surging trout pool at the head of the valley; and on Rancheria Creek, a large tributary that comes in from the northeast, there is a series of magnificent cascades, broad silver plumes like those between the Vernal and Nevada falls in Yosemite, half leaping, half sliding down smooth, open folds of the rocks covered with crisp, clashing spray, into which the sunbeams pour with glorious effect. Others shoot edgewise, through deep, narrow gorge, chafing and surging beneath rainbows in endless variety of form and tone.

The floor of the valley is about $3\frac{1}{2}$ miles long, half a mile wide, and is partly separated by a bar of glacier-polished granite across which the river breaks in rapids. The lower part is mostly a grassy, flowery meadow, with the trees confined to the sides and the river banks. The upper forested part is charmingly diversified with groves of the large and picturesque California live oak and the noble yellow pine, which here attains a height of more than 200 feet, growing well apart in small groves or singly, allowing each tree to be seen in all its beauty and grandeur. Beneath them the common pteris spreads a sumptuous carpet, tufted here and there with ceanothus and manzanita bushes, azalea and brier rose, and brightened with mariposa tulips, golden-rod, tall mints, lakspurs, geraniums, etc., amid which butterflies, bees, and humming birds find rich pasturage. Near the walls, especially on the earthquake tali that occur in many places, the pines and California oak give place to the mountain live oak, which forms the shadiest and most extensive groves. The glossy foliage, densely crowded, makes a beautiful ceiling, with only a few irregular openings for the admission of sunbeams, while the pale-gray trunks and the branches, gnarled and outspread in wide interlacing arches, are most impressively beautiful and picturesque. The sugar pine, sabine pine, incense cedar, silver fir, and tumion occur here and there among the oaks and yellow pines, or in cool side canyons, or scattered on the rifted wall rocks and benches. The river-bank trees are chiefly libocedrus, poplar, willow, alder, and flowering dogwood.

Hetch Hetchy weather is delightful and invigorating all the year. Snow seldom lies long on the floor and is never very deep. On the sunny north wall many a sheltered nook may be found embraced by sun-warmed rock bosses in which flowers bloom every month of the year. Even on the shaded south side of the valley the frost is never severe.

A good many birds winter in the valley and fill the short days with merry chatter and song. A cheerier company never sang in snow. First and best of all is the water

ouzel, a dainty, dusky little bird, about the size of a robin, that sings a sweet fluty song all winter as well as in summer, and haunts the wild rapids and falls with marvelous constancy through all sorts of weather. A few robins, belated on their way down from the upper mountain meadows, make out to spend the winter here in comparative comfort, feeding on mistletoe berries. The kingfisher also winters in the valley, the golden-winged woodpecker, and the species that stores acorns in the bark of the trees, as well as jays, wrens, sparrows, and flocks of bluebirds and snowbirds, which make lively pictures in their quest for food.

Toward the end of March the sprouting grasses make the meadows green, the aments of the alders are nearly ripe, the libocedrus is sowing its pollen, willows putting forth their catkins, and a multitude of swelling buds proclaim the promise of spring. Wild strawberries are ripe in May, the early flowers are in bloom, the birds are busy in the groves, and the frogs in pools.

In June and July summer is in prime, and the tide of happy, throbbing life is at its highest. August is the peaceful season of ripe nuts and berries—raspberries, blackberries, thimbleberries, gooseberries, shadberries, currants, puckery choke cherries, pine nuts, etc., offering royal feasts to Indians, squirrels, and birds of every feather. Then comes mellow, golden Indian summer, with its gorgeous colors and falling leaves, calm, thoughtful days, when everything, even the huge rocks, seems to be hushed and expectant, awaiting the coming of winter and rest.

Excepting only Yosemite, Hetch Hetchy is the most attractive and wonderful valley within the bounds of the great Yosemite National Park and the best of all the camp grounds. People are now flocking to it in ever-increasing numbers for health and recreation of body and mind. Though the walls are less sublime in height than those of Yosemite, its groves, gardens, and broad, spacious meadows are more beautiful and picturesque. It is many years since sheep and cattle were pastured in it, and the vegetation now shows scarce a trace of their ravages. Last year in October I visited the valley with Mr. William Keith, the artist. He wandered about from view to view, enchanted, made thirty-eight sketches, and enthusiastically declared that in varied picturesque beauty Hetch Hetchy greatly surpassed Yosemite. It is one of God's best gifts and ought to be faithfully guarded.

APPALACHIAN MOUNTAIN CLUB,
Boston, Mass., December 15, 1908.

COMMITTEE ON THE PUBLIC LANDS,
House of Representatives, Washington, D. C.

GENTLEMEN: Being advised that a hearing is to be granted to-morrow by your committee upon the petition of the city of San Francisco for a confirmation of a grant of flowage rights in certain valleys within the Yosemite National Park, said petition being represented by House Joint Resolution 184 dated May 12, 1908, I beg leave to herewith file with you a protest, on behalf of the Appalachian Mountain Club, against this grant and its confirmation.

Permit me to state that I have authority to thus speak on behalf of the club by virtue of a vote passed by our governing board on October 22, 1907. The matter was at that time before the Secretary of the Interior, and a formal protest was filed with him.

Allow me also to state that we are not speaking upon this subject without definite knowledge of the conditions both political and physical. Many of us have visited the Hetch Hetchy Valley, and in fact have traversed the entire length of the Tuolumne Canyon from Soda Springs meadows to Hetch Hetchy. Moreover, we have examined in detail all the printed evidence gathered upon the subject by the Hon. E. A. Hitchcock, who, as Secretary of the Interior, considered this petition in 1902; we have corresponded with the present Secretary of the Interior, with the Chief of the Forest Service, and with prominent citizens of San Francisco and other bay cities upon the matter. The writer has also had personal interviews on two or three occasions with two noted hydraulic engineers who had served as consulting authorities upon this subject of added water supply for San Francisco. We have, in short, taken the utmost pains to inform ourselves as to the merits of both sides of the case, and have kept posted constantly through all the proceedings.

It is our belief that Mr. Hitchcock took the only proper stand upon this petition. It was his endeavor to ascertain whether or no there was any public necessity which would justify him in surrendering to any community special rights which would tend to injure the natural beauties of the park. The act of October, 1890, requires the Secretary of the Interior to "provide for the preservation from injury of all timber, mineral deposits, natural curiosities, or wonders * * * and their retention in their natural condition."

It is true that the act gives him power to make grants such as that now under consideration, but only when it "is not incompatible with the public interest."

Mr. Hitchcock, after taking much testimony, decided that this was not the only reasonable source of water supply for the city, and that he was not justified, therefore, in granting flowage rights which would of necessity involve the mutilation of the natural wonders of the park.

Mr. Garfield, however, declined to rule upon the claim of the city that this was the only reasonable source of water supply, stating that in his judgment "it is sufficient that after careful and competent study the city officials insist that such is the case."

In this we feel that Mr. Garfield erred. What constitutes "careful and competent study?"

Two of the very best authorities on municipal water supply in the country were consulted by the opposing sides in this matter. For the city, Mr. Desmond Fitz Gerald, of Boston, made an examination and report. For the opposition, Mr. Frederic P. Stearns, also of this city, likewise made examination and report. Both engineers considered not only the present water supply but several proposed new supplies, among others the Hetch Hetchy and Lake Eleanor watersheds. Mr. Fitz Gerald favored the Tuolumne source, while Mr. Stearns reported that the present supply with the extensions which can readily be made, is in all respects adequate for many years to come.

Was not the study of the opposition therefore equally "careful and competent?"

We would not array ourselves knowingly in opposition to granting any community a proper water supply, but we feel that here is a point of fundamental importance which should be proved beyond peradventure before the Hetch Hetchy grant is confirmed. Is the Tuolumne supply the only reasonable one for San Francisco?

The mere assertion of either side that it is or that it is not, however positively made, should not be accepted as conclusive evidence. It is our hope that your committee will avail itself of the personal testimony of the two engineers named above.

We believe that you will agree with us that the resources of our national parks should not be carelessly opened to exploitation and that you will also appreciate the importance of conserving such notable scenery as these parks contain as national assets of value. Switzerland long ago appreciated the commercial and sanitary value of scenery and legislated for its conservation to her great and lasting profit. Our people are more and more coming to appreciate the value of their national scenic treasures. The Yosemite Park is year by year visited by increasing numbers. An examination of the recent reports of the superintendent of the park will show that the tide of travel has greatly increased there since the completion of the railroad to El Portal. The hotels in the main valley are already inadequate, and camping parties find it increasingly difficult to secure sites.

Hetch Hetchy Valley is admitted to be a natural wonder, but little inferior to the Yosemite proper, while the Tuolumne Canyon, through which flows and plunges the main river from the great mountain meadows at Soda Springs, is one of the big natural features of the Sierra and of the park.

The old Yosemite is soon to prove inadequate in every way to keep the throngs that will journey to those mountain regions. With better roads to Soda Springs and to Hetch Hetchy the present pressure upon Yosemite will be relieved. Civil engineers who are members of this club and who have recently traveled over the trails of the park, state that it would be a comparatively simple matter to thus open up those sections to the public. The public merely awaits the facilities. With a reservoir at Hetch Hetchy one of these great camping grounds will be extinguished, and the scenery which would attract the people thence will, in our opinion, be seriously marred. We are unable to agree with those who profess to think that a vast artificial lake, subject to heavy drafts by the water users and by evaporation in dry summers, with the attendant bare and slimy shores, will prove equally attractive to those who seek relaxation amid pleasant scenes.

It is even doubtful if the users of the water would long allow the camping upon those shores of hundreds of tourists and their animals, owing to the danger of the contamination of the supply. And will not the same hold true of the camping privilege in the Tuolumne Canyon and on the mountain meadows above? The tendency of water boards everywhere is to relieve the watersheds under their care of even a suspicion of a contaminating influence.

We regret that we are unable to be personally represented at the hearing, but we trust that this letter may be allowed to go in as a part of your record, and that your committee will take no hasty action upon the petition of the city.

Respectfully,

ALLEN CHAMBERLAIN,
Councillor of Exploration and Forestry.

SAN FRANCISCO, CAL., December 16, 1908.

CHAIRMAN OF PUBLIC LANDS COMMITTEE,
House of Representatives, Washington, D. C.:

The Yosemite National Park was created in order that the unrivaled aggregation of scenic features of this great natural wonderland should be preserved in pure wildness for all time for the benefit of the entire nation, and Hetch Hetchy Valley is a counterpart of Yosemite; and a great and wonderful feature of the park, next to Yosemite in beauty, grandeur, and importance, is the floor of Hetch Hetchy, which, like that of Yosemite, is a beautiful landscape park, diversified by magnificent groves, gardens, and flowery meadows in charming combinations specially adapted for pleasure camping; and this wonderful valley is the focus of pleasure travel in the large surrounding area of the park, and all the trails from both the south and the north lead into and through this magnificent camp ground, and though now accessible only by trails it is visited by large numbers of campers and travelers every summer, and after a wagon road has been made into it and its wonders become better known it will be visited by countless thousands of admiring travelers from all parts of the world.

If dammed and submerged as proposed, Hetch Hetchy would be rendered utterly inaccessible for travel, since no road could be built around the borders of the reservoir without tunneling through solid granite cliffs, and these camp grounds would be destroyed and access to other important places to the north and south of the valley interfered with, and the high Sierra gateway of the sublime Tuolumne Canyon leading up to the grand central camp ground of the upper Tuolumne Valley would be completely blocked and closed. Such use would defeat the purpose and nullify the effect of the law creating the park. The proponents of the San Francisco water scheme desire the use of Hetch Hetchy not because water as pure and abundant can not be obtained elsewhere, but because, as they themselves admit, the cost would be less, for there are fourteen sources of supply available. We do not believe that the vital interests of the nation at large should be sacrificed and so important a part of its national park destroyed to save a few dollars for local interests. Therefore we are opposed to the use of Hetch Hetchy Valley as a reservoir site as unnecessary, as impartial investigation will demonstrate.

JOHN MUIR, *President*,
C. T. PARSON,
J. N. LECONTE,
WM. F. BADE,
Directors of the Sierra Club.

SONORA, CAL., December 17, 1908.

HON. W. F. ENGLEBRIGHT,
House of Representatives, Washington, D. C..

This county largely interested in point of diversion. If below confluence of North Fork and main Tuolumne River serious conflict will with rights, probable on account of contamination of waters from mining, lumbering, etc. Wire exact point of diversion contained in Hetch Hetchy bill. If no point of diversion stated, insist on insertion as above.

T. F. MCGOVERN,
Chairman Board Supervisors

